112-261

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~[illegible]~~ 937

THE BOARD OF SUPERVISORS OF GRENADA COUNTY, WILEY H. POWELL, PRESIDENT, ET AL., PLAINTIFFS IN ERROR,

vs.

J. BROGDEN & COMPANY, A FIRM COMPOSED OF REUBEN P. MAIN, WASHINGTON C. DePAUSE, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 4, 1881.

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No. 609.

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1 United States district court, northern district of Mississippi.

Proceedings had in the district court of the United States for the northern district of Mississippi, begun and held for its June term, A. D. 1879, at the court-house, in Oxford, Miss., on, to wit, the 22 day of May, 1879, and days subsequent thereto, in the following cause:

THE BOARD OF SUPERVISORS OF GRENADA County, plaintiffs in error,
vs.
J. BROGDEN & CO., DEFENDANTS IN ERROR.

Lamar, Mayes & Branham, of Oxford, Miss., attorneys for plaintiffs in error.

Honston & Reynolds, of Aberdeen, Miss., att'ys for defendants in error.

2 *Declaration.*

UNITED STATES OF AMERICA,
Northern District of Miss.:

District court, June term, 1879.

J. BROGDEN & CO., PLAINTIFFS,
vs.
GRENADA COUNTY, DEFENDANTS.

Reuben P. Main, Washington C. D. Pause, Jesse J. Brown, John S. McDonald, Morris McDonald, Mary Rapsly, William S. Coulhitson, & Dellord Rickets, merchants & partners, trading under the firm name and style of J. Brogden & Co., all citizens of the State of Indiana, by attorney, complains of The Board of Supervisors of Grenada County, in the said northern district of Mississippi, which board of supervisors is comprised of Wiley H. Powell, as president, and of A. K. Turner, Henry Russell, R. C. Weir, and P. M. Miller, as members, of a plea that said county render unto them the sum of eighty thousand dollars, which to them it owes and unjustly detains.

3 For that on the 1st day of May, 1872, in said northern district, said County of Grenada, under and pursuant to an order of the board of supervisors of said county, made under the authority of the constitution and laws of the State of Mississippi and authorized by a vote of the people of said county, did execute to the Vicksburg and Nashville R. R. Co., or bearer, its certain bonds, each for the sum of five hundred dollars, and numbered from one to three hundred inclusive, and thirty of said bonds payable in one year from the date thereof, and a like number for each successive year for ten years thereafter.

Plaintiff avers that all of said bonds were signed by R. H. Turner, president of the board of supervisors, and C. P. Lincoln, clerk, and sealed with the official seal of said county, and payable to the Vicksburg and Nashville R. R. Co., or bearer, with interest at the rate of eight per cent. per annum, payable semi-annually on the first day of March and Septem-

ber of each year, on the presentation of the coupons thereto annexed.
4 That said bonds were issued and delivered to said Vicksburg and Nashville R. R. Co., by said County of Grenada, to pay the amount subscribed by said county to the capital stock of said R. R. Co., in pursuance of an act of the legislature of the State of Mississippi, entitled "An act to aid in the construction of the Grenada, Houston and Eastern R. R., now Vicksburg and Nashville Railroad," approved Feb. 10th, 1860, and of an act amendatory thereof passed March 25th, 1871, an' entitled "An act to aid in the construction of the Grenada, Houston and Eastern Railroad," approved February 10th, 1860, and in obedience to a vote of the people of said county, held in accordance with the provisions of said acts.

Plaintiffs therefore complain and say: 1st. That heretofore, to wit, on the first day of Jan'y, 1874, they became and are now the bona fide holder and owner for value of thirteen of said bonds (to the court here shown), numbered from 126 to 138 inclusive, each for the sum of five hundred dollars, and each due and payable four years from the date
5 thereof; that each of said bonds are past due and wholly unpaid. By reason whereof an action hath accrued to plaintiffs to recover the amount of each of said bonds and interest at eight per cent. per annum.

II. And plaintiffs further complain and say that heretofore, to wit, on the 1st day of Jan'y, 1874, they became and are now the bona fide owners holders for value of twelve of said bonds (to the court here shown), made and executed as aforesaid, and numbered from 139 to 150 inclusive, each dated the first day of May, 1872, for the sum of five hundred dollars each, and each due and payable five years from the date thereof; that each of said bonds are due and wholly unpaid. By reason whereof an action hath accrued to said plaintiffs to recover the said amount of each of said bonds and interest thereon at the rate of eight per cent. per annum.

6 III. And plaintiffs further complain & say that heretofore, to wit, on the first day of Jan'y, 1874, they became and are now the bona fide owners and holders for value of thirteen of said bonds (to the court here shown), made and executed as aforesaid, and numbered from 151 to 163 inclusive, each dated the first day of May, 1872, for the sum of five hundred dollars each, and each due and payable five years from the date thereof; that each of said bonds are due and unpaid. By reason whereof an action hath accrued to said pl'ffs to recover the said amount of each of said bonds and interest thereon at the rate of eight per cent. per annum.

IV. And pl'ffs further complain and say that heretofore, to wit, on the first day of Jan'y, 1874, they became and are now the bona fide owners and holders for value of twenty-one of said bonds (to the court here shown) made and executed as aforesaid, and numbered 76, 79, and to 88, inclusive, and 164 to 175, inclusive, each dated the first day of May,
7 1872, for the sum of five hundred dollars each, and each due and payable seven years from the date thereof; that each of said bonds are past due and wholly unpaid. By reason whereof an action hath accrued to said pl'ffs to recover the said amounts of said bonds and interest thereon at the rate of eight per ct. per annum.

V. And pl'ffs further complain and say that to secure the semi-annual

payment of interest at eight per cent. on each of said bonds of five hundred dollars each there was attached two coupons for each year until the maturity of said bonds, due respectfully on the first day of March and September each for the sum of twenty dollars, and each payable to the Vicksburg and Nashville R. R. Co., or bearer, at their agency in the city of New York, and signed by said R. H. Turner, president of the board of supervisors, and C. P. Lincoln, clerk. Pl'ffs aver that heretofore, to wit, on the first of Jan'y, 1874, they became and are now
8 the bona fide owners and holders and bearers, for value, of three hundred and eighty-nine of said coupons, each for the sum of twenty dollars, and for the semi-annual interest on the said bonds heretofore described, from the first day of March, 1875, to the time of their maturity, and also of one hundred and eighty-nine of said coupons, each for the sum of twenty dollars, and due and payable as aforesaid, being the semi-annual payment of interest from the 1st of March, 1875, to the first March, 1879, on twenty-one other bonds, made and executed as aforesaid by the County of Grenada on the first day of May, 1872, and due and payable eight years from the date thereof; that of said coupons there are eighty, each for $20, amounting to $1,600, due 1st March, 1875, a like number and for a like sum due the 1st of September, 1875, and a like number and for a like sum due the 1st March, 1876; that of said coupons there sixty-seven for the aggregate sum of $1,340, due 1st March, 1876, and a like number due 1st of September, 1876; that of said coupons there are 55 for the aggregate sum of $1,100, due 1st March, 1877,
9 and a like number and for a like sum on the 1st of September, 1877; that of said coupons there are forty-two for the aggregate sum $840, due 1st March, 1878, and a like number and for a like sum due 1st September, 1878, and for a like number and for a like sum due 1st of March, 1879. The coupons herein last described are on bonds due and payable on the 1st May, 1880, and numbered from 176, 188, inclusive, 90, 91, 92, 94, 95, 97, 98, 99; that all of said are past due and wholly unpaid. By means whereof an action hath accrued to said pl'ffs to recover the amount of said coupons and interest thereon until paid.

VI. Plaintiffs further complain and say that heretofore, to wit, on the first day of March, 1879, the defendant was indebted to plaintiffs in the sum of twenty thousand dollars, for so much had and received by the defendants to and for the use of the pl'ffs, and in the further sum of twenty thousand dollars then and there found to be due pl'ffs from
10 said defendant upon an account then and there taken and stated between them.

And being so indebted the said defendant promised to pay said plaintiffs said several sums of money when it should thereunto afterwards requested.

Yet defendant, though often requested, has failed to pay said several sums of money, but to pay the same hath hitherto failed and refused and still refuses, to plaintiffs' damage eighty thousand dollars; and therefore they sue.

W. F. TUCKER,
HOUSTON & REYNOLDS,
Att'ys for Pl'ffs.

The following is copy of one of the bonds sued on:

$500.00.] [500.00.

COUNTY OF GRENADA,
State of Mississippi:

Be it known that the County of Grenada, State of Mississippi, is indebted unto and promises to pay the Vicksburg and Nashville Rail-
11 road Company, or bearer, at the agency of said company in the city of New York, years from the date hereof, five hundred dollars, lawful money of the United States of America, with interest at the rate of eight per cent. per annum, payable semi-annually on the 1st day of March and September of each year, on the presentation and surrender of the proper coupons hereto annexed. This bond is one of a series of bonds issued and delivered to the Vicksburg and Nashville R. R. Co., by Grenada County, to meet and pay of the amount subscribed by said co. to the capital stock of the R. R. Co. aforesaid, in pursuance of an act of the legislature of the State of Miss., entitled "An act to aid in the construction of the Grenada, Houston and Eastern R. R., now Vicksburg and Nashville R. R.," approved Feb'y 18th, 1860, and of an amendatory thereof passed March 25th, 1871, and in obedience to a vote of the people of said county at an election held in accordance with the provisions of said acts.
12 In witness whereof the board of supervisors of said county have caused the signature of the president of said board to be hereto affixed, countersigned by the clerk with his official seal affixed, and who have also signed the coupons hereto attached, at their office in Grenada, this 1st day of May, 1872.

R. H. TURNER,
President Bd. of Supervisors.

C. P. LINCOLN, *Clerk.*

13 of said bonds have the word "four" before word years in 6 line.
12 of said bonds have the word "five" before word years in 6 line.
13 of said bonds have the word "six" before the word years in 6 line.
21 of said bonds have the word "seven" before word years in 6 line.
21 of said bonds, the coupons of which are alone sued upon, have the word "eight" before years in 6 line.

The following is a copy of two coupons sued on:

$40.00. The County of Grenada will pay to the Vicksburg and
13 Nashville R. R. Co., or bearer, twenty dollars at their agency, in the city of New York, on the first day of September, 1875, being six months' interest on bond No. 126.

R. H. TURNER,
Pres'd't B'd Supervisors.

C. P. LINCOLN, *Clerk.*

The other coupons sued upon are copies of foregoing, except as to dates of maturity, the time of maturity being stated in complaint.

Pl'ffs' bill of particulars.

59 bonds, $500 each	.....	$29,500
578 coupons, $20 "	.....	11,580
		$41,080

The bonds sued upon in this declaration are as follows:

13 bonds due May 1st, 1876, numbered 136 to 138, inclusive.
12 bonds " " " 1877, " 139 to 150, inclusive.
13 bonds " " " 1878, " 151 " 163, "
21 bonds " " " 1879, " { 76, 79, 80, 81, 84, 85, 86, 87, 88, 164 to 175, inclusive.

Coupons on bonds due May 1st, 1880, those bonds not being sued upon, and the bonds numbered as follows, 176 to 188, inclusive, and from 90 to 99, inclusive, except Nos. 93 and 96. The suit is upon all coupons on those bonds which fell due March 1st, 1879, and preceding dates.

HOUSTON & REYNODS,
Att'ys for Pl'ffs.

14 Filed and summons issued May 22, 1879. G. R. Hill, clerk.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

This action is brought to recover on 59, bonds, of $500 each, and 578 coupons of the county of Grenada, issued in the aid of the Vicksburg and Nashville R. R. Co., aggregating the sum $41,060, held by pl't'ffs. Said sum of money and interest as set forth in the declaration is the demand.

G. R. HILL, *Clerk.*

Summon.

The President of the United States to the marshall of the northern district of Mississippi, greeting:

We command you without delay to summon the Board of Supervisors of Grenada County, citizen of the State of Mississippi, residing in the northern district thereof, that they be and appear before the district court of the United States to be held at the town of Oxford, for the said
15 northern district of Mississippi, on the first Monday of June next, to answer to the complaint of Reuben P. Main, Washington C. D. Pause, Jesse J. Brown, John S. McDonald, Morris McDonald, Mary A. Rapsley, William S. Comlutson, and Dillard Rickets, merchants and partners, trading under the firm name and style of J. Brogden and Co., citizens of the State of Indiana, and that they do file their plea or defense with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Rob't A. Hill, judge of the district court of the United States for the northern district of Mississippi, at Oxford, the first Monday of Dec., A. D. 1879, and 103 year of the Independence of the United States.

Issued the 22d day of May, 1879.

[SEAL.] G. R. HILL, *Clerk.*

Executed on W. H. Powell by handing him a true copy of this writ, he being president of board of supervisors, this May 24, 1879.

J. L. MORPHIS,
U. S. Marshall.

16 And afterwards, to wit, on the 12th day June, 1879, the same being a day of the June term of said court in said year, the following order was made in said cause, to wit:

Order.

J. BROGDEN & Co.
vs. } 3325.
BOARD OF SUPERVISORS OF GRENADA COUNTY.

Upon application defendants are allowed sixty (60) days within which to plead as of this term.

Afterwards pleas were filed in this cause in the words and figures following, to wit:

Pleas.

In the district court of the United States for the northern district of Mississippi. To the December term, A. D. 1879.

J. BROGDEN & Co.
v. } 3325.
THE BOARD OF SUPERVISORS OF GRENADA COUNTY.

1ST PLEA. And the said defendant, by its attorneys, comes and says that it denies that said bonds and coupons sued on were issued under and by virtue of said acts of February 10th, 1860, March 25th, 1871,
17 and of 27th of January, 1872, as by plaintiffs in their said declaration herein is untruly alleged; and of this the said defendant puts himself upon the country. Wherefore it prays judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def't.

2ND PLEA. And the said defendants, by its attorneys, for a further plea in this behalf, comes and says that it claims that said bonds and coupons sued on were issued under and by virtue of said act of 27th of January, 1872; but on the contrary, says that they were issued under and by virtue of the said acts of February 10th, 1860, and of March 25th, 1871, and of none other, of which the said plaintiffs had notice by the recitals contained on the face of the said bonds; and this the said defendants is ready to verify. Wherefore it prays judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Deft's.

3D PLEA. And the said defendants, for a further plea in this behalf, by its attorneys, comes and says that of the bonds and coupons
18 herein sued on those bonds numbered from 126 to 175, inclusive, and those coupons taken from bonds numbered from 126 to 175, inclusive, were part and parcel of a lot of one hundred bonds, for five hun-

dred dollars each, with the coupons thereto attached, were issued by the said board of supervisors under the circumstances following: That on the 3rd day of October, 1871, the said board of supervisors made an order to submit to the qualified voters of said county of Grenada a proposition to subscribe the sum of fifty thousand dollars to the capital stock of the Vicksburg and Grenada Railroad Company; that under and by virtue of said order a pretended election was held in said county on the 7th day of November, 1871, at which pretended election more than two-thirds of the qualified voters of said county assented to said proposition; whereupon said board ordered and made a subscription to said capital stock on the 4th day of December, 1871, and on the 2nd day of May, 1872, said (lot of one hundred) bonds and the coupons thereto attached were issued
19 to secure the payment of said subscription. That at the time of said order of submission, at the time of said pretended election, and at the time of said pretended subscription, there was neither any law of the State of Mississippi authorizing any of these steps to be taken, nor was there any such railroad company in existence, and said road has never been constructed either in whole or in part; and this the said defendant is ready to verify. Wherefore it prays judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def't.

4TH PLEA.—And the said defendant, for a further plea in this behalf, by its attorneys, comes and says that of the bonds and coupons herein sued on those bonds numbered from 126 to 175, inclusive, and those coupons taken from bonds numbered from 126 to 175, inclusive, were part and parcel of a lot of one hundred bonds, for five hundred dollars each, with the coupons thereunto attached, were issued by said board of supervisors under the circumstances following: That on the 3d day of
20 October, 1871, the said board of supervisors made an order to submit to the qualified voters of Grenada County a proposition to subscribe the sum of fifty thousand dollars to the capital stock of the Vicksburg and Grenada Railroad Company; that under and by virtue of said order a pretended election was held in said county on the 7th day of November, 1871, at which pretended election more than two-thirds of the qualified voters of said county assented to said proposition; whereupon said board ordered and made a pretended subscription to said capital stock, on the 4th day of December, 1871; that at the time of said order of submission, at the time of said pretended election, and at the time of said pretended subscription *their* was neither any law of the State of Mississippi authorizing any of those steps to be taken nor was *their* any such railroad company in existence; that there was then, and had been for a long time previous thereto, a scheme on hand to build a railroad having its termini at the city of Vicksburg, in the county of War'en, and in the town of Grenada, in said county of Grenada; that it was in
21 furtherance of that scheme that said pretended election was held and said pretended subscription was made, and not in aid of the Grenada, Houston and Eastern Railroad Company; that on the third day of January, 1872, the projectors and managers of said scheme were, by an act of the legislature of the State of Mississippi, entitled "An act to in-

corporate the Vicksburg, Yazoo Valley and Grenada Railroad Company," incorporated under the name first aforesaid, and by their said charter were granted the exclusive right to construct, build, and maintain, own, use, and manage a railroad from Vicksburg aforesaid, by the way of Yazoo City, in the county of Yazoo, to Grenada aforesaid, and were also granted the right to receive subscriptions in aid of said enterprise from the counties along the line of said railroad. Defendant avers that if said subscription was obligatory on said county yet the same belonged to the said Vicksburg, Yazoo Valley and Grenada Railroad Company, and was intended therefor, yet that the legislature of the State of Mississippi, by said act of January 27th, 1872, attempted to authorize the said Grenada,
22 Houston and Eastern Railroad Company to extends it' line over the very line exclusively granted as aforesaid; and, further, without any vote of the people of said county, and without their consent thereto, pretended to ratify and confirm the said submission and vote theretofore had on behalf of the said Vicksburg and Grenada Railroad Company to said Grenada, Houston and Eastern Railroad Company, under the name of the Vicksburg and Nashville Railroad Company; and further mad' it the duty of the said board of supervisors to subscribe for fifty thousand dollars of the capital stock of said Vicksburg and Nashville Railroad Company, and to issue bonds of the said county, on demand of the president or other authorized agent of said company, without any proposition relative to said subscription or said issuance being submitted to the voters of said county in any shape whatsoever, which said board did, to the amount of fifty thousand dollars, as aforesaid, of which said issue said bonds 126 to 175 are parcel as aforesaid, and of all
23 this the said plaintiff was fully and duly notified before he purchased said bonds and coupons herein sued on; all of which the said defendant is ready to verify. Therefore it pray' judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def'ts.

5TH PLEA.—And for a further plea in this behalf, the said defendant, by its attorneys, comes and says that those of said bonds herein sued on numbered from 126 to 175, and those of said coupons herein sued on taken from said bonds 126 to 175, were part of a series of one hundred bonds for five hundred dollars each, and the coupons thereto attached were issued by the said board of supervisors of Grenada County to the Vicksburg and Nashville Railroad Company on the 1st day of May, 1872, under the following circumstances: That the said board did, on the 3d day of October, 1871, submit to the qualified voters of said county a proposition to subscribe to the capital stock of the Vicksburg and Grenada Railroad
24 the sum of fifty thousand dollars, which said proposition was, on the 7th day of November, 1871, at an election held for that purpose, assented to by more than two-thirds of said voters. That thereupon a subscription was, on the 4th day of December, 1871, ordered by said to be made to said capital stock. That on the 27th day of January, 1872, the legislature of the State of Mississippi, by an act entitled "An act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company, and for other purposes," under-

took to ratify and confirm said vote to the Vicksburg & Nashville Railroad Company without any assent of said voters said county either had or to be had to that end, and directed peremptorily the said board of supervisors of said county, upon demand of the president or other authorised agent of said company, to subscribe for fifty thousand dollars of the capital stock of the said Vicksburg and Nashville Railroad Company, and to deliver to the president and directors of said company bonds of said county to secure the payment for the subscription for said stock and the interest thereon; which said board did as aforesaid. And, therefore,
25 the defendant avers that the bonds so executed and delivered were not the property of the said president and directors to be by them sold or assigned in any way, but were a mere pledge to secure the payment of said subscription and the interest thereon as aforesaid; and that the said coupons attached to said bonds are wholly unauthorized by said act, and are void; of all of which plaintiff had notice before he purchased said bonds and coupons. And defendant further avers that the consideration for said subscription has wholly failed in this, that said road has never been either wholly or in part constructed, and the scheme is now abandoned. And this it is ready to verify. Wherefore it prays judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def't.

6TH PLEA.—And the said defendant, for a further plea in this behalf, says that those bonds herein sued on, numbered from 126 to 175, inclusive, and those coupons herein sued on attached to said bonds, were part
26 and parcel of a lot of one hundred bonds, for five hundred dollars each, with coupon of interest thereto attached, delivered by the board of supervisors of Grenada County on, to wit, the 2nd day of May, 1872, to the president and directors of the Vicksburg and Nashville Railroad Company, under pretense of authority confer'ed by the 4th section of said act of 27th January, 1872, to secure the payment of a certain pretended subscription for stock to the said Vicksburg and Nashville Railroad Company, and said bonds were so delivered without any authority, real or pretended, other than that aforesaid, and the said acts of February 10th, 1860, and 25' March, 1871. And this said defendant is ready to verify. Wherefore it prays judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def't.

7TH PLEA. And the said defendant, for a further plea in this behalf, says that bonds and coupons herein sued on were issued by the Board of Supervisors of Grenada County on to wit, the 2nd day of May, 1872, under color of an election held on 7th day of November, 1871,
27 by the qualified voters of said county, under and by virtue of a pretended authority conferred by the said acts of February 10th, 1860, and March 25, 1871, alone, and a pretended subscription for capital stock of the Vicksburg and Nashville Railroad Company, based thereon; and that no election by said voters was ever held under any provision of said act of 27th January, 1872, for the purpose of authorizing such subscrip-

tion. And this the said defendant is ready to verify. Wherefore he prays judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def't.

8TH PLEA. And the said defendant, for a further plea in this behalf, says that the bonds and coupons herein sued on were issued by the Board of Supervisors of Grenada County on, to wit, the 2nd day of May, 1872, under color of an election held by the qualified voters thereof, on the 7th day of November, 1871, under and by virtue of a pretended au-
28 thority conferred by the said acts of February 10th, 1860, and 25th of March, 1871, alone, and a pretended subscription for capital stock of the Vicksburg and Nashville Railroad Company, based thereon; and that no election by said voters was ever held under any provision of said act of January 27th, 1872, for the purpose of authorizing said subscription; of all which the plaintiff had due notice when he acquired said bonds and coupons. And this the said defendant is ready to verify. Wherefore it prays judgment, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def't.

9TH PLEA. And the said defendant, for a further plea in this behalf, says that the bonds and coupons herein sued on were issued without authority of law; and this it is ready to verify. Wherefore it prays, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
For Def't.

Filed 5th March, 1880. G. R. Hill, clerk.

29 Afterwards, to wit, on the 14th day of December, 1880, a plea was filed in this cause in words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Mississippi:

In the district court. To the December term, 1880.

J. BROGDEN & CO.
vs. } 3325.
BOARD OF SUPERVISORS OF GRENADA COUNTY.

Plea.

And the said defendant, by its attorneys, comes and defends the wrong and injury, when, &c., and says that it does not owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiffs have in their declarations complained against it; and of this the defendant puts itself upon the country, &c.

R. H. GOLLODAY AND
EDWARD MAYES,
Att'ys for Def't.

Filed this 14th day of December, 1880. G. R. Hill, clerk.

30 Afterwards, to wit, on the 15th day of December, 1880, the same being a day of the December term of that year, an order was made in this cause in words and figures following, to wit:

J. BROGDEN & CO.
vs. } 3325.
BOARD OF SUPERVISORS OF GRENADA COUNTY.

Order.

By agreement of parties leave is hereby given by the court to the defendants to withdraw their plea hereinbefore pleaded, and to file plea of the general issue.

Afterwards, to wit, on the 17th day of December, 1880, an agreed statement of facts was filed in this cause in words and figures following, to wit:

Agreed state of facts.

Nos. of Grenada County bonds hypothecated with J. Brogden & Co., of New Albany, Ind., for iron for R. R. Co. (Vicksburg & Nashville): Nos. 126 to 188, inclusive; also Nos. 76, 79, 80, 81, 84, 85, 86, 87, 88, 90, 91, 92, 94, 95, 97, 98, and 99, in all eight' (80) bonds, at five hundred dollars each, making forty thousand dollars.

D. P. BLACK,
Sec. & Treas.

JUNE 17th, 1874.

31 From 51 to 150, inclusive, were the bonds issued for the east end of the road; from 1 to 50 and from 151 to 200, inclusive, were for the west end of the road.

J. BROGDEN & CO.
vs.
GRENADA COUNTY.

In this cause it is agreed that all objections to the pleadings are waived, and that the defendant, under the plea of nil debit, might offer any evidence of affirmative facts as well as those competent under the general issue, and the cause being submitted to the jury, the evidence on both sides established the following facts, subject to objections on the score of competency and relevancy of such facts:

That the plaintiffs are the bona fide holders for value of the bonds and coupons sued upon, except in so far as they are legally chargeable with notice; that the copy of the bonds and coupons attached to declaration is correct, and that the bonds and coupons as described are held by plaintiffs and read in evidence; that plaintiffs are the bona fide holders of
32 said bonds and coupons, and became the holders on first of January, 1874, without any notice or knowledge of any defense thereto except such as may be legally charged to them.

That the county of Grenada, in 1872 and 1873, assessed and collected taxes to pay the coupons maturing at these respective periods on all the bonds sued upon, and the coupons for the years 1872 and 1873 have been fully paid. The levy of 1872 did not embrace coupons of bonds 151 to 175; they were not issued until Oct.

That after Grenada County subscribed for stock in the Grenada, Houston and Eastern R. R. Co., certificates of stock issued by the Vicksburg and Nashville R. R. Co. to the amount of $100,000, being the full amount of all the bonds issued by the county, and at the time of their issuance were delivered to the proper officer of the county, and that these stock certificates have never been returned or tendered back to the railroad company. The stock was in two lots of $50,000 each, one not issued until after 6th of March, the other not until after 8th Oct., 1872. (See orders of board ordering issuance of bonds. See also R. R. minutes, p. 64.)

33 That the County of Grenada by its duly accredited and legal'y appointed agent was represented at all the stockholders' meetings of the R. R. company and represented and voted a stock subscription of $100,000. On 6th March, 1872, the board appointed proxies to represent them at the stockholders' meetings of Vicksburg and Nashville R. R.; and thenceforward said board sent various parties to represent the county at all the meetings.

That the act of the legislature entitled "An act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company," approved January 29th, 1872, was accepted at a meeting of the board of directors of said company on 31 January, 1872.

That the following proceedings were had by the board of supervisors of Grenada County in reference to subscription of stock and issuance of bonds, and other matters appertaining thereto:

"August term, 1871.

"On this day, to wit, the 7th day of August, 1871, being one of the days of a regular meeting of the board of supervisors of Grenada County' called and held according to law, came on to be heard and considered by the said board of supervisors aforesaid the petition of sundry citi-

34 zens of said county, twenty-five or more in number, praying the board to make and enter all such orders as may be deemed necessary to cause an election to be held at the several precincts in said county, to take the sense of the legal voters thereof on the proposition to be then and there submitted to them, whether or not this board of supervisors, by the president thereof, shall, for and in behalf of Grenada County, subscribe for one thousand shares, being fifty thousand dollars, of the capital stock of the Grenada, Houston and Eastern Railroad Company, to be met and paid in eight annual installments, as nearly equal in amounts as may be conveniently ascertained, with interest at 8 per cent. on the amount due, from the 1st day of January, 1873, payable annually by taxation upon the property of the taxpayers of said county, as is provided for in the act of the legislature of the State of Mississippi, entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad Company, approved February 16, 1860,' and the act amendatory thereof,

35 which became a law on the 25th day of March, 1871; and it be-

ing proven to the satisfaction of this board of supervisors that the said petition hath been signed by twenty-five citizens of said county, and that it is, under the acts aforesaid, the duty of this board to grant the prayer of said petitioners:

"It is therefore adjudged, and so ordered by this board, that the election be held at the several election precincts in said county to take the sense of the legal voters thereof upon the proposition to be then and there submitted to them, whether or not this board of supervisors, by the president thereof, for and in behalf of Grenada County, shall subscribe for one thousand shares, being fifty thousand dollars, of the capital stock of the Grenada, Houston & Eastern Railroad Company, to be met and paid in eight annual installments, as nearly equal in amounts as may be conveniently ascertained, with interest on the amount at 8 per cent. per annum, from January 1st, 1873, by taxation to be levied and collected from the proper tax-payers of said county, the first to be collected in the fiscal year 1872.

36 "And on further considering of the said petition it is adjudged and ordered by this board that a like proposition be at the same time submitted to the said voters, whether or not a like subscription for the same amount, to be paid in the same number of installments, to be met and paid by taxation, in the like time and manner, be made for the capital stock of the Vicksburg and Grenada Railroad Company. And it is further ordered that the said propositions be submitted to said legal voters, and that they be voted on jointly as one joint proposition; and in order to ascertain the correct and true sense of the said voters, those who desire to vote for the said subscription shall have written or printed on their ballots the words, 'For railroad subscriptions;' and those who desire to vote against the proposed subscriptions shall have written or printed on their tickets the words, 'Against railroad subscriptions.' And it is further ordered by this board that the registrars for Grenada County shall hold the said election according to law, on Saturday, the 30th day
37 of September, 1871, after having first given at least twenty days' notice of the time of holding said election, and of the amount proposed to be subscribed, and in what number of installments the same shall be paid, by posting notices at five or more public places in said county, and by publication of a like notice in the Grenada Sentinel. And the president of the board of registrars for said county shall make to this board of supervisors full and proper reports or returns of said election by causing the same to be filed in the office of the chancery clerk of *of* said county, within five day' after the close of said election, to be thereof considered by this board at the next meeting thereof.

"Ordered and adjudged by the board of supervisors of Grenada County, and ordered to be entered in the minutes thereof, this 7 day of August, 1871, and signed by the president of the board.

"J. D. LEFLOUR,

"*President Board of Supervisors of Grenada County.*

38 "Board of supervisors, Oct. term, 1871.

"On this the third day of October, 1871, being one of the days of a regular meeting of the board of supervisors of Grenada County, called

and held according to law, came on to be heard and considered by the said board of supervisors the petition of sundry citizens of said county, more than twenty-five in number, praying this board to make and enter all such orders as may be necessary to cause an election to be held at the several precincts in said county to take the sense of the legal voters thereof on the proposition to be then and there submitted to them, whether or not this board of supervisors, by the president thereof, shall, for and in behalf of Grenada County, subscribe for one thousand shares, being fifty thousand dollars, to the capital stock of the Grenada, Houston and Eastern Railroad Company, to be met and paid off in eight annual installments, as nearly equal in amount as may be conveniently ascertained, with eight per
39 cent. interest upon the amount due on 1st day of January, 1873, or from the date of the county bonds, if any should be issued, payable annually by taxation upon the property of the tax-payers of said county, as provided for by law.

"And it being proven to the satisfaction of the board of supervisors that the said petition hath been signed by twenty-five citizens and voters of said county, and that it is under the law the duty of the board to grant the prayer of said petition—

"It is therefore ordered, adjudged, and decreed by this board that the election be held at the several election precincts of said county, to take the sense of the legal voters thereof upon the proposition to be then and there submitted to them, whether or not this board of supervisors, by its president, for and in behalf of Grenada County, shall subscribe for one thousand shares, or fifty thousand dollars, to the capital stock of the Grenada, Houston and Eastern Railroad Company, to be met and paid in eight annual installments, as nearly equal in amounts as may be con-
40 veniently ascertained, with interest at 8 per cent. per annum from January 1st, 1873, unless the said sum should be paid off by the supervisors in county bonds, when, in that case, it is ordered that interest at 8 per cent. per annum become due from the date of said bonds; the said sum of fifty thousand dollars to be paid by taxes, to be levied and collected annually from the tax-payers of said county, for eight years, the first installment to be collected in the fiscal year 1872.

"And on further considering of said petition, it is adjudged and ordered by this board that a like proposition be at the same time submitted to the said voters, whether or not a like subscription, for the same amount, to be paid in the same manner and in a like number of installments, with the same rate of interest, to be met and paid by taxation, in the like time and manner, be made for the capital stock of the Vicksburg and Grenada Railroad Company; and it is further ordered that the said proposition
41 be submitted to said legal voters, and *and* that they be voted on as one joint proposition. And in order to ascertain the correct and true sense of said voters, those who desire to vote for the said subscriptions shall have written or printed on their ballots "For railroad subscriptions," and those who desire to vote against the proposed subscriptions shall have written or printed on their ballots "Against railroad subscriptions."

"And it is further ordered by this board that the registrars for the county of Grenada shall hold the railroad election, according to law, at the

same time that the general election is held, to wit, on the 7th day of November, 1871, notices having been first given as the law directs.

"It is further ordered that the board of registrars, through it' president, make to this board of supervisors full and proper reports or returns of said railroad election, by causing the same to be filed in the office of the chancery clerk of said county of Grenada within five days after the
42 close of said election to be considered of by this board at its next meeting thereafter.

"Ordered and adjudged by the board of supervisors of Grenada County, and ordered to be entered on the minutes thereof this 3d day of October, 1871.

"Board of supervisors, Grenada County, Miss., Dec. term, 1871.

"On this day, to wit, the 4th day of December, 1871, being one of the days of the regular term of the board of supervisors of Grenada County, came on to be heard and considered by the board the within report of W. E. Bronsen, president of the board of registrars of said county and general returning officer of elections of said county, therein representing to this board that, in pursuance of law and the former orders of this board, an election was regularly held at the several election precincts in said county, on Tuesday, the 7th day of November, 1871, to take the sense of the legal voters of said county on the propositions submitted to said legal voters, whether or not this board of supervisors, for and in behalf of Gren-
43 ada County, shall subscribe for fifty thousand dollars each of the capital stock of the Grenada, Houston and Eastern Railroad Company, and of Vicksburg and Grenada Railroad Company; and it being proven to the satisfaction of this board of supervisors that the said election was duly advertised and regularly held at the several election precincts in said county, according to the law and the former order of this court, and that at said election a constitutional majority of two-thirds of the legal and registered voters of said county were cast for the railroad subscriptions, thereby authorizing and directing the board of supervisors, for and in behalf of Grenada County, to subscribe for fifty thousand dollars of the capital stock of the Grenada, Houston and Eastern Railroad Company, and fifty thousand dollars of the capital stock of the Vicksburg and Grenada Railroad Company, to be met and paid off in eight annual installments, as nearly equal in amount as may be conveniently ascertained by tax-
44 ation, to be levied and collected and to be paid over to *to* said railroad companies, respectively, at the same time the State and county taxes due in said county for the fiscal year 1872 *and* collected and paid over to the State and county:

"It is therefore adjudged and ordered by the board of supervisors that the president thereof subscribe for fifty thousand dollars each of the capital stock of the Grenada, Houston and Eastern Railroad Company and of the Vicksburg and Grenada Railroad Company for and in behalf of Grenada County, to be met and paid off by taxation as aforesaid, in eight annual installments, in amounts as nearly equal as may be conveniently ascertained; the first to be levied and collected from the proper tax-payers of said county, and to be paid over to said railroad companies, respectively,

at the same time the State and county taxes are collected and paid over to the State and county in the fiscal year 1872, and annually thereafter until the whole shall be collected and paid.

45 "Ordered, adjudged, and decreed this 21' day of December, 1871.

"J. D. LEFLOUR, *Pres.*
"J. B. CROWDER.
"J. W. PARKER.
"ANDREW his + mark. DAVIS.
"FREELAND his + mark. TOWNES.

"Witness's:
"W. R. BARKSDALE.

"Board of supervisors, March term, 1872.

"This day came on to be considered the petition of W. F. Tucker, president of the Vicksburg and Nashville Railroad Company, praying this board to make an order directing the president thereof to sign and issue, and deliver to the president and directors of the said Vicksburg and Nashville Railroad Company bonds of Grenada County sufficient in amount to meet and pay of' the fifty thousand dollars of the capital stock of the said Vicksburg and Nashville Railroad Company heretofore made by the president of this board to the Grenada, Houston and Eastern Railroad Com-
46 pany, now the Vicksburg and Nashville Railroad, for and in behalf of Grenada County, with coupons of interest thereto attached, in amounts sufficient to cover the interest upon said bonds from May 1st, 1872, as the same falls due; and it appearing to the satisfaction of this board that, in pursuance of law and the vote of a majority of two-thirds of the legal voters of said county, the president of this board did, for and in behalf of Grenada County, subscribe for fifty thousand dollars of the capital stock of the said Vicksburg and Nashville Railroad Company, to be met and paid of" in eight annual installments, as nearly equal in amount as can be conveniently ascertained, with coupons of interest thereto attached, in amount sufficient to cover the accruing interest on said bonds:

"It is therefore adjudged and ordered by this board that the president sign and issue and deliver to the said W. F. Tucker, president of the said Vicksburg and Nashville Railroad Company, bonds and coupons of interest attached sufficient in amount to cover and meet the subscrip-
47 tion for stock and the accruing interest as aforesaid, agreeably to the term' of said subscription, as the statute in such cases provided, and that he take for and in behalf of Grenada County proper certificates of stock in said railroad company for the amount so subscribed, and file the same in the office of this board.

"Ordered and adjudged by this board, and ordered to be entered in the minutes thereof, the 6th day of March, 1872, and signed by the president.

"R. H. TURNER,
"*President of Board of Supervisors.*

"This day came on to heard the application of W. F. Tucker, president of the Vicksburg and Nashville Railroad Company, to have proxies

appointed to represent the stock of the County of Grenada in said railroad company at a meeting of the stockholders of said company soon to be held for the transaction of business which, by the law, is referable to the stockholders; wherefore it is ordered by the board that A. P. Dunaway
48 and L. C. Lell be, and they are hereby, authorized to represent the County of Grenada in a meeting of the stockholders of the Vicksburg and Nashville Railroad Company, to be upon the call of the president, and upon all subjects discussed in said meeting to cast as many votes as the county is entitled to. It is further ordered that either of the above-named gentlemen shall cast the vote of Grenada County in said meeting if the other be absent.

"Board of supervisors, July term, 1872.

"Ordered, That the petition of W. F. Tucker, pres. of the V. and N. R. R., for the issuance of bonds of Grenada County to meet and pay off subscription of $50,000.00 be continued to next meeting of this board.

"Same term.

"Ordered by the board, That for the purpose of raising a fund to pay off and discharge the first installment of bonds and interest coupons of
49 Grenada County issued to the Vicksburg and Nashville Railroad Company a special tax of seven-tenth' of one per cent. on the dollar, $\frac{7}{10}$ %, is hereby levied on the taxable property of the county, to be collected as the law directs in the year 1872. It is further ordered by the board that the application of the Vicksburg and Nashville Railroad Company for and additional of taxes be continued until the next term of this court.

"August term, 1872.

"The petition of W. F. Tucker, president of the Vicksburg and Nashville Railroad Company, praying the board to make an order directing the president thereof to sign and issue and deliver to the president and directors of the said Vicksburg and Nashville Railroad Company bonds of Grenada County sufficient in amount to meet and pay off the subscription of fifty thousand dollars to the capital stock of said railroad company com-
50 ing on for hearing and examination, and it appearing to a majority of the board, to wit, Andrew Davis, no, Edward Scott, no, R. H. Turner, no, that there are doubts as to the validity and binding force of the subscription of said stock:

"It is ordered by the board that *that* said petition be rejected, and that this board hereby refuses to order the issuance of said bonds as prayed for.

"Oct. term, 1872.

"STATE OF MISSISSIPPI,
"*Grenada County:*

"Superior court, Oct. term, 1872.

"This day came on to be heard and considered the petition of W. F. Tucker, president of the Vicksburg and Nashville Railroad Company,

praying this board to make an order directing the president thereof to sign and issue and deliver to the president and directors of the said Vicksburg and Nashville Railroad Company bonds of Grenada County sufficient in amount to meet and *and* pay off the subscription of fifty thousand dollars to the capital stock of the Vicksburg and Nashville Railroad Company, which subscription was made by the president of this board, made at a former day, in obedience to a vote of two-thirds of the voters and tax-payers of Grenada County, by which they agreed subscribe the said sum of 50 thousand dollars to the Vicksburg, Grenada and Nashville Railroad, which subscription was afterwards ratified and confirmed to the Vicksburg and Nashville Railroad Company by an act of the legislature of the State of Mississippi. And it appearing to the satisfaction of this board that, in pursuance of law and the vote of a majority of two-thirds of the legal voters of said county, did for and in behalf of Grenada County subscribe fifty thousand dollars to the capital stock of the said Vicksburg and Nashville Railroad with interest at 8 per ct. from the first day of July, 1872, to be met and paid off in eight annual installments as nearly equal in amount as can be conveniently ascertained: It is therefore ordered and adjudged by this board that the president thereof sign, issue, and deliver to W. F. Tucker, president of said Vicksburg and Nashville Railroad Company, bonds and coupons of interest sufficient in amount to cancel and meet the said subscription for stock and the accruing interest as aforesaid agreeably to the terms of said subscription as the statute in such cases provides, and that he take for and in behalf of Grenada County proper certificates of stock in said railroad company for the amount so subscribed, and file the same in the office of this board. Ordered and adjudged by this board, and ordered to be entered in the minutes thereof, this 8th day of Oct., 1872.

51

52

"November term, 1872.

"Ordered that the account of R. H. Turner, president of this board, for ten dollars for signing railroad bonds be, and the same is hereby, allowed.

53

"Nov. term, 1872.

"Ordered by the board, That L. French, sheriff and tax collector of the county, enter into bond with two or more good and sufficient securities, to be approved by the president of the board of supervisors, and payable to the president of said board, or his successor or his successors in office, in the penal sum of twenty thousand dollars, conditional that he will well and truly collect and safely keep and pay over to the order of the president of said board all monies collected under the statute entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad,' approved Feb. 11th, 1860, and the acts amendatory thereof, now known and called the Vicksburg and Nashville R. R. Company.

"January term, 1873.

"Ordered by the board, That G. W. Trimble, be and is hereby, authorized to vote the stock of this county in any convention of the stock-

54 holders of the Nashville and Vicksburg Railroad Company, and that he have power to substitute another if he cannot attend.

"July term, 1873.

"Ordered by the board, That the levy of a tax upon the taxable property of the county for the fiscal year A. D. 1873, for the purpose of paying off and discharging the bonds issued by the county to the Vicksburg and Nashville Railroad Company, and accruing interest thereon, be fixed and levied for the fiscal year A. D. 1873 as follows, to wit: Eight and one-half (8½) mills on the dollar of taxable property of the county to pay the bonds issued by said county in favor of the Vicksburg and Nashville Railroad Company for the western division of said road in said county, and eight and one-half mills (8½) on the dollar, to pay the bonds issued by said county to said railroad company for the eastern division of said road in said county, which tax shall be collected according to
55 the statute in such cases made and provided, and that the clerk of the board certify the same to the auditor of public accounts and the sheriff of the county according to law.

"*The tax of the Vicksburg and Nashville Railroad Company.*

"Motion by E. S. Fisher to set aside the order this day made, ordering a tax to be collected by the sheriff and tax collector for the purpose of paying certain subscriptions, interest and bonds, made and issued by the said railroad company.

"The said motion coming up to be heard, the said Fisher proved that he was a tax-payer on property of the value of about nine thousand dollars; he also insisted that on the 7th day of November, 1871, there was no act of the legislature chartering a railroad company from Vicksburg to Grenada. He further insisted that all the charter on the subject is what appears in the law entitled 'An act to amend the acts now in force
56 concerning the Grenada, Eastern and *and* Houston Railroad Company, and for other purposes.' Said Fisher further showed that he is not and has not been a voter of Grenada County since July, 1871. He further showed that he protested last year against the tax levied on account of said road, and insisted that the said charter as so amended works such a change as to defeat the said subscription in the name of the county of Grenada; he further showed that no election has been held in said county for the purpose of ratifying said change, or since the 7th day of November, 1871, to said tax. Whereupon, the court being fully satisfied in the premises, it is ordered the said motion be, and is hereby, overruled.

"December term, 1873.

"Ordered that G. W. Trink be, and is hereby, authorized to vote the stock of this county in any convention of the stockholders of the Vicksburg and Nashville Railroad Company, and that he have power to substitute another if he cannot attend for the year 1874.

57 "STATE OF MISSISSIPPI, *Grenada County:*

"I, A. V. B. Thomas, clerk of the chancery court of said county and State, do hereby certify that the within is a true and correct copy—

("NOTE.—The remainder of this certificate is torn off & has been lost, & cannot be found after diligent search.")

58 That all of the bonds and coupons herein sued on were issued under and by virtue of the proceedings herein set forth and the said vote of 7th November, 1871, and under none other whatsoever.

That of the bonds and coupons sued on those numbered from 1 to 50 and 151 to 175, inclusive, were issued to pay the subscription voted by the people to the Grenada and Vicksburg Railroad Co.; that all the other bonds were issued to pay subscription to Grenada, Houston and Eastern Railroad Co.

That there was no charter of any such railroad company as the Grenada and Vicksburg R. R. Co., but that for a long time previous to said vote a scheme had been agitated in said county for such a railroad with its termini at Vicksburg and Grenada, as well as for the construction of the Grenada, Houston and Eastern Railroad, with its termini at Grenada and the Alabama line, and with contemplated extension to Nashville, Tennessee, the two to be distinct companies, with distinct boards and distinct stock subscriptions, the amount of stock to be received by said contemplated
59 Vicksburg and Grenada R. R. Co. being about $5,000,000.00 estimated; and on the 3rd day of January, 1872, the prospectors and managers of the railroad scheme so designated and actually intended in said vote were incorporated by an act of the legislature, entitled "An act to incorporate the Vicksburg, Yazoo Valley and Grenada Railroad Company," which act is hereby referred to and considered as part of this agreement; and that said company on the 3d day of March, 1872, made an agreement of consolidation with the Vicksburg and Nashville Railroad Company, the within contract being hereby referred to as part hereof.

That the amendment to the charter of the Grenada, Houston and Eastern Railroad Company by the act of 29th January, 1872, extended the line of the road westwardly and in the direction of Vicksburg, Miss., over the contemplated route for which the people of Grenada County had voted a subscription of $50,000.00 in aid of a railroad extending from Grenada to Vicksburg, and that the line east of Grenada is over the same route
60 under said amended charter as was contemplated by the original charters and the vote of the people of Grenada County at the time of their stock subscription.

That the following are the acts of the legislature incorporating the Grenada, Houston and Eastern Railroad and amendatory thereof: Act of Feb. 6th, 1860; act of Feb. 10th, 1860; act 25th March, 1871; and act of 29th January, 1872.

Of the Vicksburg and Nashville Railroad there were graded and bridged, at the Okolona end, 20 miles westward, and about 5 miles of it ironed; at Grenada, eastward, about 8 miles graded. The lines of the from Okolona to Grenada were surveyed and located, and from Grenada as far as Greenwood (on the way to Vicksburg) surveyed and part of that located.

An execution from the United States court for the northern district of

Mississippi was levied on the road, and the road thereunder, on the day 187 , to W. L. Nugent, agent of Alfred Moreland, of Louisiana. The company did not resist the sale because they hoped to effect a new organization, with Moreland as a member. That has not been done
61 yet. Moreland is now proposing to go in as a member of a new company. No work has been done on said road, and no meeting of stockholders has been had since 1874, or of directors since July 6th, 1875. The iron laid was bought from plaintiffs, and the bonds sued on were given in payment therefor, and no other payment has been made. The bonds were executed by the president and clerk of the board, as averred, and the copy filed with the declaration is correct.

And thereupon the court instructed the jury as follows, to wit:

BROGDEN AND CO.
vs.
GRENADA COUNTY.

The court instructs the jury as follows:

This is an action of debt, brought by the plaintiff against the Board of Supervisors of Grenada County to recover the amount due upon the bonds and coupons described in the declaration. The defense is that these bonds and coupons were issued without authority of law, and therefore void and not binding obligations upon the defendant or the tax-payers
62 of the county of Grenada.

The agreed state of facts read to you is submitted in place of the evidence on both sides, and from which you will find your verdict under the rules of law applicable thereto, which the court will state to and by which you will be governed.

1st. The plaintiffs being admitted to be bona fide holders of these bonds and coupons for value, and without notice of any defences thereto, except such as the law charges them with, they are entitled to a verdict for the sum due thereon, unless there was a want of legislative authority in the board of supervisors or their officers to make the subscription for the capital stock in the Grenada, Houston and Eastern Railroad Company, and to issue said bonds and coupons in payment of same.

2nd. Section 1 of an act of the legislature of this State, entitled "An act to aid in the construction of the Grenada, Houston and Eastern Railroad," which became a law on the 23' day of March, 1871, con-
63 ferred upon the Board of Supervisors of Grenada County the authority, upon the petition of twenty-five or more citizens of said county, to cause an election to be held in said county to take the sense of the voters of the county whether or not said board of supervisors should subscribe for capital stock in said railroad company, not to exceed the sum of two hundred thousand dollars; and provided further, that when said election should be held it should be conducted in all things as required in the act to which the same may be amendatory, and of the constitution and laws of the State in force at the time said election should be held. The present constitution of this State was then in force, which required, to justify and render said subscription valid, that two-thirds of the qualified voters of said county should vote in favor of said subscription. The court instructs you that this section of said act conferred authority upon said board of

supervisors to make said subscription of capital stock upon compliance with the conditions therein prescribed, and that the plaintiff", as
64 such bona fide holders, were not required to look further than to see that this authority was conferred, and that as the bonds upon their face recite that the provisions of said act were complied with the defendants are estop'ed from denying that they were so complied with.

3d. The 4th section of said act authorizes the issuance of the bonds, with interest coupons attached, in payment for said stock.

The act of the legislature of this State, entitled "An act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company," approved Jan. 27, 1872, by the 2nd section thereof, changed the name of said Grenada, Houston and Eastern Railroad Company to that of the Vicksburg and Nashville Railroad Company, and conferred upon said company, under said new name, all the property, rights, and privileges held by said company under its former name, so that these bonds and coupons were properly issued and made payable to said Vicksburg and Nashville Railroad Company.

65 The courts instructs *the* you that the agreed statement of facts does not constitute a valid defense to a recovery of the amount due upon the bonds and coupons described in the declaration under the rules of law applicable thereto; that under the different acts of the legislature the railroad company had the right to consolidate their company and road with that of any other, and to extend their in the direction of Vicksburg, and that such consolidation or the issuance of bonds to complete the same did not invalidate the bonds and coupons in the hands of a bona fide purchaser and holder for value, and without notice. You will, therefore, find in your verdict the amount of the bonds described in the declaration, with 8 per cent. interest per annum thereon since the maturity thereof, respectively; also the amount of the coupons attached thereto, as described in the declaration, together with interest thereon at six per cent. per annum since the same became due and payable.

Filed Dec. 17, 1880. G. R. Hill, clerk.

66 To which instructions counsel objected as follows, to wit:

1st. Because the court erred in not instructing the jury that the bonds and coupons sued on were void for want of authority in the county to subscribe to the capital stock of the railroad company or companies.

2nd. Because the court erred in not instructing the jury that the bonds and coupons sued on were void for want of authority in the county to issue them in payment of its subscriptions to the capital stock of said company or companies.

3d. Because the court erred in not instructing [*the jury] that the fundamental alterations effected in the charter of the Grenada, Houston and Eastern R. R. Co., by the act of 1872, being after the vote and before the subscriptions, invalidated the subscriptions made and the bonds issued in payment therefor.

67 4. Because the court erred in not instructing the jury that the consolidation of the Vicksburg and Nashville Railroad Company and of the Vicksburg, Yazoo Valley and Grenada Railroad Campany taking place after the vote of subscription to the Grenada, Houston and Eastern

* In pencil.

Railroad Company, and before the lawful subscription to that company, released the county from its vote for subscription, took away the power of the board to make such subscription, and rendered void the bonds in the hands of pl'ffs.

5. Because the court erred as to bonds numbered 151 to 171, inclusive, and the coupons belonging thereto; that as the subscription was voted to the Vicksburg and Grenada Railroad, then a non-existent corpora-
68 tion, it was void, and such void vote and the subscription based thereon were not validated by section 4 of act of 1872, because of the want of a constitutional vote in favor of the Vicksburg and Nashville Company.

6. Because the court erred as to bonds numbered 151 to 171, and the coupons belonging thereto, in not instructing the jury that the vote and subscription on which they were based, if valid, belonged to the Vicksburg and Grenada R. R. (alias V., Yazoo Valley and G. R. R.), and section 4 of act of 1872 is void because it divested vested rights, and so that said bonds and coupons are void.

7. Because the court erred as to the bonds numbering 151 to 171, and the coupons belonging thereto, in not instructing the jury that the bonds and coupons could not be collected in this action because the
69 conditions precedent to the payment by said county of its said subscription have not been performed.

8. Because the court erred as to the bonds numbered 151 to 171, and the coupons belonging thereto, in not instructing the jury that said bonds and coupons were really in pledge from the county to the company, and that said company could only claim said bonds subject to equities; and that if the jury believe that the consideration for such subscription had failed, or that the company had by any act after such subscription released said county, then that they must find for the defendant.

E. MAYES, *for Def't.*
HOUSTON & REYNOLDS,
Att'ys for Pl'ff'.

Filed Dec. 17, 1880. G. R. Hill, clerk.

Afterwards, to wit, on 17th December, 1880, the same being a day of the December term of this court, for 1880, an order was made in this case cause in words and figures following, to wit:

70 *Judgment.*

J. BROGDEN & Co.
vs. } 3325.
BOARD OF SUPERVISORS OF GRENADA COUNTY.

Came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit: R. M. Levell and eleven others, who, being duly elected, empanelled, charged, and sworn well and truly to try the issue joined between the parties, upon their oaths say, they find for the plaintiff in the sum of forty-eight thousand six hundred and ninety-seven and $\frac{45}{100}$ dollars. It is therefore considered by the court that the plaintiffs have and recover of said defendants the sum of forty-eight thousand six

hundred and ninety-seven dollars and 45 cents, so found by the jury aforesaid, with interest thereon *on a'* 6 per cent. per annum, together with their costs by them about this suit in this behalf expended, for which let execution issue.

Afterwards, to wit, on the 21st Jan., 1881, the same being a day of the December term of this court for 1880, an order was made
71 in this cause in words and figures as follows, to wit:

Order.

J. BROGDEN & CO.
vs. } 3325.
BOARD OF SUPERVISORS OF GRENADA COUNTY.

In this cause it is considered by the court, and so ordered, that the defendant have until the day of March, 1881, being at the end of the adjourned term of this the December term, 1880, of this court, in which to prepare and file its bill of exceptions in this cause.

Afterwards, to wit, on the 31st of April, 1881, as of the 31st of Dec., 1880, was filed in this cause a bill of exceptions in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Northern District of Mississippi:

In the district court of the United States at the Dec. term, 1880.

J. BROGDEN & CO.
vs.
THE BOARD OF SUPERVISORS OF GRENADA COUNTY.

72 *Bill of exceptions.*

Be it remembered that this day came on to be heard the above-entitled cause, and it was submitted to a jury on an agreed state of facts, as follows, to wit:

1. Plaintiffs are the bona fide holders for value of the bonds and coupons sued upon, except in so far as they are legal'y charg'able with notice.

2. The copy of the bonds and coupons attached to the declaration is correct, and the bonds and coupons as described & numbered in said declaration were produced by plaintiff before the jury, and appeared to have been duly and regularly signed and executed.

3. That plaintiffs became the holders of said bonds and coupons on the 1st day of January, 1874.

4. That the county of Grenada in 1872 assessed and collected taxes to pay the coupons for that year from those of the bonds sued on numbered from 76 to 150, inclusive, and in 1873 assessed and collected taxes to pay the coupons for that year on all the bonds sued on, and such coupons were paid accordingly.

5. After Grenada County subscribed for stock in the Grenada,
73 Houston and *and* Eastern R. R. Co. certificates of stock issued by the Vicksburg and Nashville R. R. Co. to the amount of one hundred thousand dollars, being the full amount of all the bonds issued by the county, and at the time of their issuance were delivered to the proper officer of the county, and that these stock certificates have never been returned or tendered back to the railroad company. The stock was in two lots of fifty thousand dollars each; one lot not issued until after the 6th March, 1872; the other not until after the 8th October, 1872.

6. On the 6th March, 1872, the board appointed proxies to represent the county at the stockholders' meetings of the Vicksburg and Nashville R. R. Co.; and thenceforward said board sent various parties to represent the county at all such meetings, on the basis of the stock issued—that is to say, $850,000 from 6th March, 1872, and $100,000 after the 8th October 1872—which includes the bonds sued on.

7. The act of the legislature entitled "An act to amend the several acts now in force concerning the Grenada, Houston and Eastern Rail-
74 road Company," approved January 29th, 1872, was accepted at a meeting of the board of directors of that company on January 31st, 1872, by a resolution in the words and figures following:

PITTSBORO', *January 30th*, 1872.

On motion of F. A. Martin,

Resolved by this board of directors, at this a regular meeting thereof, that this board do now accept all the provisions of the act of the legislature of the State of Mississippi entitled "An act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company, and for other purposes," approved January 27th, 1872, and do also adopt as a part and portion of the Vicksburg and Nashville Railroad Company the extension specified in said act from Grenada to Vicksburg; and this board of directors do now declare, in this solemn form and manner, that the Vicksburg and Nashville Railroad Company will construct, own, and run the said extension of their said railroad from Grenada to Vicksburg, as authorized in the act aforesaid, in common with the
75 other portion of their said road as soon and as rapidly as their means and credit will enable them so to do; which resolution, after being duly considered, was agreed to and adopted by a unanimous vote of the board.

8. That the following proceedings were had by the board of supervisors of Grenada County in reference to the subscriptions for stock and the issuance of bonds and other matters appertaining thereto, and that all the bonds and coupons herein sued on were issued under and by virtue of said proceeding and the said vote of November 7th, 1871, and under none other whatsoever. (See ante pages to of this record, inclusive.)

9. That of the bonds and coupons sued on those numbered from 151 to 188, inclusive, were issued to pay the subscription voted by the people to the Vicksburg and Grenada Railroad Company, and that all the other bonds sued on were issued to pay the subscription to the Grenada, Houston and Eastern Railroad Company.

10. That at the time of said vote and order for subscription there was no charter of any such railroad company as the Vicksburg and

76 Grenada R. R. Co., but that for a long time previous to said vote a scheme had been agitated in said county for such a railroad, with its termini at Vicksburg and Grenada, as well as for the construction of the Grenada, Houston and Eastern Railroad, with the termini at Grenada, and the Alabama line (with contemplated extension to Nashville); the two to be distinct companies, with distinct boards of directors and distinct stock subscriptions; the am't of subscriptions to be received by said contemplated Vicksburg and Grenada R. R. Co. being about $5,000,000.00, as estimated. On the 3d day of January, 1872, the projectors and managers of the railroad scheme so designated (as the Vicksburg and Grenada R. R. Co.), and so actually intended in said vote, were incorporated by an act of the legislature entitled "An act to incorporate the Vicksburg Yazoo Valley and Grenada Railroad Company," which act, so far as the same is material to this cause, is in the words and figures following, to wit:

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That William R. Miles, Harper P. Hunt, R. C. Sheperd, Abner G. Gale, B. B. Ewing, Robert Wilson, R. Bowman,

Names of incorporators.

77 F. P. Hilliard, Miles T. Brown, William Richards, J. U. Gilruth, Robert J. Miller, David McCaleb, Benjamin Lee, George M. Barber, Alexander Kuhn, William S. Lun, John A. Kline, R. R. Thomas, E. S. Butts, J. Hunthal, Charles Perin, William G. Bender, J. D. Lafflon, George W. Walton, H. F. Suirrall, J. Z. George, Thomas C. Buffington, E. S. Fisher, S. S. Fairchild, James U. McLane, Richard Davis, William F. Stanberry, O. S. Lee, D. D. Foote, W. S. Epperson, C. E. Morgan, J. R. Everette, R. W. Wade, William Ray, F. W. Keys, and their associates, be, and they are hereby, incorporated into and constituted a body politic and corporate under the name and style of the "Vicksburg, Yazoo Valley and Grenada Railroad Company," and by that name are hereby authorised to have and to hold real and personal property for the objects, business, and purposes of said corporation within this State, to make contracts, to sue and be sued, to make rules and regulations and by-laws; also ordinances for the management, direction, and control of said corporation not inconsistent with the laws of the State of Mississippi, and to the provisions stated and set forth in this act, and to have, enjoy, and

Name of company.

Powers conferred on company.

78 exercise all the rights, powers, and privileges pertaining to corporate bodies and necessary for the objects and purposes of this act, with the privilege and authority to exercise corporate power within the State of Mississippi.

SECTION 2. Be it further enacted, That the general purposes and objects of this corporation, the pursuit and furtherance of which are hereby granted, are hereby defined to be as follows: First, to have the exclusive right to *contract* [construct] and build and thereafter to own and maintain and manage and use a railroad upon such a course and such a route and with such a track or tracks thereupon as may be deemed by a majority of the directors of said corporation proper, expedient, and best adapted and for the public accom'odation from some suitable point in or near the city of Vicksburg towards and to a point (by way of Yazoo City, in Yazoo County) at or about the connexion of the Mississippi and Tennessee Railroad, in the town of Grenada, in *Yalobusha*

Purposes & objects of company.

[Grenada] County, State of Mississippi; second, to take, transport, carry, and convey passengers and property upon said railroad by power
79 of steam or by any other power and to receive for such transportation, carriage, and conveyance such toll and charges as shall be from time to time established, fixed, and regulated by the directors of *of* said corporation.

SECTION 13. Be it further enacted, That this corporation is hereby authorized and empowered to enter into any contract with any railroad company or companies, corporation or corporations, within or without the limits of this State, by which the railroad of such companies or corporations shall be consolidated with the railroad, of this corporation, or any parts of the same, and form one continuous or connecting railroad, to be known by one common name and by which the capital stock of this corporations, and such other companies or corporations, shall become merged and consolidated into one joint and common stock, and be and exist in one company or corporation, with one seal, one president, one vice-president, and one board of directors; and such company or corporation, so formed, shall have, possess, and enjoy in this State all the powers, franchises, rights, and privileges granted to or vested in this corporation by virtue of this act, or any and all subsequent
80 amendments and additions thereto.

Authority to join with other road.

SECTION 19. Be it further enacted, That it shall be the duty of the boards of police or boards of supervisors of the several counties through which said railroad may pass, and the corporate authorities of all incorporated towns and cities situated in such counties, on the written request of the president of the board of directors of said railroad, to submit *it* to the qualified voters thereof the question as to whether the tax-payers and property holders of such counties, cities, and towns shall be taxed upon all their taxable property, real and personal, to aid in the construction of said road, and the said board of supervisors and corporate authorities shall, in submitting said vote, designate or state the amount of said tax to be voted for; provided, always, that said amount shall not exceed one and one-half per centum upon the assessed value of the taxable property in said county, city, or town, and the annual installments in which it shall be paid; and that two-thirds of the legally qualified voters of said counties, cities, and towns in such election held be required, and the said board of supervisors
81 and corporate authorities shall, upon request, submit to said counties, cities, and towns the question as to whether they will loan their credit to said road, and the thereof shall at the same time be designated by said boards of supervisors and corporate authorities; and if any county, city, or town shall, by a two-thirds vote decide to loan its credit to said railroad, the said board of supervisors or corporate authorities shall issue bonds therefor, bearing not more than eight per centum per annum interest, which said bonds shall be signed by the president of the board of supervisors, or the mayor of said city or town as the case may be, and the said county, city, or town, to the amount of said loan, shall be entitled to like amount of stock in said road; and it shall be the duty of such board of supervisors and corporate authorities, immediately on receipt by them of said written request, to order such election to be held within sixty days from the day such request is

To submit question subscription of stock to qualified voters or counties, cities, & towns.

How subscription shall be made.

so received by them respectively; and such elections shall be regulated by the laws then in force governing elections in such counties, cities, and towns, and the returns thereof shall be made and certified in due form by the inspector of such elections, and deposited with the clerks
82 of the chancery courts of their respective counties, for record and public reference.

SECTION 21. Be it further enacted, That certificates of stock shall be issued on said railroad to said counties, cities, and towns to the amount of tax paid by them respectively; and the president of the board of supervisors, under the direction of the supervisors, and the mayors of cities or towns, under the direction *under the direction* of respective town councils, shall be entitled, in all elections held by said railroad company, to cast the vote for, and in all respects represent the stock of said counties, cities, and towns, and all dividends which may be declared on the earnings of said road shall be paid to the treasurers of said counties, cities, or towns according to the respective amounts of their stock.

Railroad to issue certificate of stock.

11. On the 3d day of March, 1872, the said Vicksburg & Nashville Railroad Company made with the said Vicksburg, Yazoo Valley, and Grenada Railroad Company an agreement of consolidation, by the following resolutions, adopted at its meetings:

Extracts from the minutes of the board of directors of the Vicksburg and Nashville R. R. Co.

83 GRENADA, MISS., *March 5th*, 1872.

The president reported the articles of consolidation proposed between the Vicksburg and Nashville Railroad Company, and the Vicksburg, Yazoo Valley and Grenada Railroad Company.

Pending the consideration of these articles, J. T. Griffin, seconded by A. P. Dunaway, moved that this board do now adjourn until two o'clock p. m., and that the president and directors of the Vicksburg, Yazoo Valley and Grenada Railroad Company, be invited to meet with us at that time. Motion carried, and the board adjourned until 2 p. m.

2 O'CLOCK P. M.

The board met pursuant to adjournment. Present, the president and all the directors present this morning, and M. M. Boland.

Coming on to be considered the articles of consolidation reported this morning, the following named directors of the Vicksburg, Yazoo Valley and Grenada Railroad were present, to wit: Harper P. Hunt, pres'd't; and F. W. Keys, E. S. Butts, T. C. Buffington, and J. D. Lafflore,
84 directors. After considerable discussion, on motion of J. T. Griffin, H. P. Hunt and F. W. Keys, on the part of the V. B., Y. V. and G. road, and W. F. Tucker and T. U. Martin for the V. and N. road, were appointed a committee of conference on the articles of consolidation.

The committee reported as follows:

STATE OF MISSISSIPPI.

Be it remembered that the articles of consolidation and contract have this day been entered into and concluded by and between Harper P. Hunt, president, and Thos. C. Buffingt m, F. W. Keys, J. D. Leflore, David McCalet, Alex. Kuhn, E. S. Butts, G. W. Barber, and Geo. Walton, directors of the Vicksburg, Yazoo Valley and Grenada Railroad Company, of the

first part, and W. F. Tucker, president, and T. A. Martin, Simon Myers, J. Bretney, J. T. Griffin, T. T. Enochs, Austin Woodard, D. C. Dulany, M. M. Boland, L. C. Lee, A. P. Dunaway, and H. B. Sherman, directors of the Vicksburg and Nashville Railroad Company, of the second part, witnesseth: That whereas, by the provisions of an act of the legislature of the State of Mississippi entitled "An act to incorporate the Vicksburg, Yazoo Valley and Grenada Railroad Company," approved January
85 3d, 1872, authorizing said company to lay out, construct, own, and use a railroad from some suitable point in or near the city of Vicksburg, toward and to a point by the way of Yazoo City, in Yazoo County, at or about the connection of the Mississippi and Tennessee Railroad, in the town of Grenada, in Yalobus'a County; and whereas the 13th section of the charter of said company authorised and empowers said corporation to enter into any contract with any railroad company by which the railroad of such company or corporation shall be consolidated and form one continuous and connecting railroad, to be known by one common name, &c.; and whereas by the terms and provisions of an act of the legislature of the State of Mississippi, entitled "An act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company, and for other purposes," approved January 29th, 1872, the Grenada, Houston and Eastern Railroad Company, now known as and called the Vicksburg and Nashville Railroad Company, are authorised to lay out and construct, own, and use an extension of the said Grenada, Houston and Eastern Railroad, otherwise the Vicksburg & Nash-
86 ville Railroad Company, from the town of Grenada to the city of Vicksburg, by the way of Yazoo City; and whereas the extension of said railroad from the town of Grenada to the city of Vicksburg, by virtue of the acts aforesaid, is now intended to form a part and portion of the Vicksburg and Nashville Railroad aforesaid; and whereas the presidents and board of directors of each of said companies are fully satisfied that the interests of the country through which it is proposed to build the entire line of road will be best subserved by the consolidation hereby made and confirmed, and that the construction of said line to be made and performed by the Vicksburg and Nashville Railroad Company under and by virtue of the several acts aforesaid, and under the full management and control of said company:

Now, therefore, in consideration of the premises and undertakings of the Vicksburg and Nashville Railroad Company, by their president and directors aforesaid, now proposed and made, to wit:

First. That said company, for and in consideration of this con-
87 solidation and assignment, and for other valid considerations, bind and obligate themselves and their successors in office, as well as the company which they represent, that the Vicksburg and Nashville Railroad Company aforesaid shall and will construct and build the whole line of railroad from Vicksburg to the Tennes'ee River, in accordance with the power confer'ed by the respective charters herein referred to, as rapidly as the state and condition of the means and credit of said company will enable them to do.

Second. That they or their successors in office will commence, (as hereinafter provided), the line of road from Vicksburg to Grenada, now known as the V. B., Y. V. & G. Railroad, and complete the same in ac-

cordance with the first section of the amended act of the Vicksburg and Nashville Railroad Company, approved January 29th, 1872, but in all other respects to comply with the 18th section of the charter of the V. B., Y. V. & G. Railroad Company aforesaid.

Third. That when said road is fairly commenced, that in case
88 means are furnished from the contemplated Vicksburg and Grenada portion of the line of road down the Yazoo Valley, and it is desired by the parties controlling the money subscribed, work shall commence from both the Vicksburg and Grenada ends, and be pushed forward to completion as rapidly as the means can be raised; and the State subsidy acquired by virtue of this assignment shall be appropriated as required by law, upon each end of this portion of the road respectively.

Fourth. That under no circumstances or conditions is this contract to be so abridged or construed that the application or charter of this consolidation, as to secure a termination of the line of road at any other point than Vicksburg, which has for its object any river connection to be used for the purpose, or to the effect of delaying or protracting the construction of the Vicksburg and Nashville Railroad, to the City of Vicksburg, or which will prejudice the completion of the road terminating at Vicksburg as aforesaid, and that the depot at Vicksburg shall be established as near the mouth of Glasses Bayou as practicable, and by no means
89 to be erected or built below or further south than Jackson street in said city.

Fifth. That the Vicksburg and Nashville Railroad Company, upon its organization will give in its directory an impartial representation to that part of the road from Grenada to Vicksburg.

Sixth. That the said Vicksburg and Nashville Railroad Company shall and will commence the work in good faith upon the line road between Vicksburg and Grenada at least ninety days prior to the time limited by the 18th section of the charter of the Vicksburg, Yazoo Valley and Grenada Railroad Company for such commencement, and on failure so to do, this consolidation and assignment shall be absolutely null and void, and the company now making this transfer, shall have and possess the right and complete right thereafter, under their said charter, just as fully as though these articles of transfer and consolidation had never been made.

Now, in full consideration as aforesaid, the president, directors, and company of the Vicksburg, Yazoo Valley and Grenada Railroad Company, upon the faith of a true performance of the foregoing obligation to
90 be done and performed by the president, directors, and company of the Vicksburg *of the Vicksburg* & Nashville Railroad Company (parties to this contract) and their successors, have consolidated with and transferred and assigned to said Vicksburg and Nashville Railroad Company, and their successors or assigns, and they do by these presents consolidate with, transfer, and assign to the Vicksburg and Nashville Railroad Company all the corporate right, privileges, and franchises (except the right to sue and be sued in their corporate capacity, as provided by sections one and fifteen (1 & 15) of their charter, and keep their organization in tact) which were granted to or conferred upon the said Vicksburg, Yazoo Valley and Grenada Railroad Company by the charter aforesaid, they, by these presents, intending to consolidate with and to merge in said Vicksburg and Nashville Railroad Company for the purposes and ends afore-

said, which were by the act first aforesaid, conferred upon or vested in the said Vicksburg, Yazoo Valley and Grenada Railroad Company, (except to retain as aforesaid the right conferred by sections 1 and 15,
91 to sue and be sued for any violation, omission or infraction of these articles of consolidation) hereby agreeing to and with the said Vicksburg and Nashville Railroad Company that the company they represent shall desist from all other actions or proceedings, as a separate company or corporation, under and by virtue of the act first in these articles mentioned, other than the board of directors organized and known herein as the Vicksburg and Nashville Railroad Company—except the reservation specially mentioned and provided for in these articles of consolidation.

In testimony whereof the parties representing said companies, as aforesaid, have signed, sealed and delivered in duplicate the foregoing articles of consolidation and assignment, for the purposes and objects therein specified and set forth. Done and confirmed at the town of Grenada, State of Mississippi, this the 5th day of March, in the year of our Lord one thousand eight hundred and seventy-two.

HARPER P. HUNT, *Pres't V'b., Y. V. & G. R. R. Co.* [L. S.]
T. C. BUFFINGTON, *V.* " " " " " " " " [L. S.]
92 G. W. BARBER, *Director* " " " " " " [L. S.]
ALEXANDER KUHN, " " " " " " " [L. S.]
D. McCALEB, " " " " " " [L. S.]
GEO. W. WALTON, " " " " " " [L. S.]
E. S. BUTTS, *Sec't. & Treas.* " " " " " " [L. S.]
F. W. KEYS, " " " " " [L. S.]
J. D. LEFLORE, " " " " " [L. S.]

T. A. Martin offered the following resolution, which was unanimously adopted:

Resolved by the board of directors of the Vicksburg and Nashville Railroad Company, That the articles of consolidation and assignment of the chartered rights, privileges, and franchises of the Vicksburg, Yazoo Valley and Grenada Railroad Company, this day made by the president and directors of the company last aforesaid to the railroad company first aforesaid, be in all things accepted by this board, and that this resolution be indorsed upon the said articles of consolidation, and be signed by the president and members of this board, and that the said articles be entered in the minutes of the proceedings of this board, and be binding upon the board and upon the company. Done at the town of Grenada, in
93 Grenada County, and signed and sealed by the president and members of the board this 5th day of March, A. D. 1872.

W. F. TUCKER, *President.* [L. S.]
T. T. ENOCHS, *V. P.* [L. S.]
A. P. DUNAWAY. [L. S.]
H. B. SHERMAN. [L. S.]
J. T. GRIFFIN. [L. S.]
L. C. LEE. [L. S.]
M. M. BOLAND. [L. S.]
J. BRETNEY. [L. S.]
D. C. DULANEY. [L. S.]
T. N. MARTIN. [L. S.]
SIMON MYERS. [L. S.]

On motion, J. D. Leflore was elected a member of the board by acclamation.

On motion of T. N. Martin, the president is authorized to have bonds for Grenada County printed to the amount of one hundred thousand dollars.

12. The company, as consolidated, retained its old name of the Vicksburg and Nashville Railroad Company; but on said 3d March, 1872, and after said consolidation, J. D. Leflore, a director in said Vicksburg,
94 Yazoo Valley and Grenada R. R. Co., was elected a director of the Vicksburg and Nashville R. R. Co., and thenceforward acted as such.

13. That the amendment to the charter of the Grenada, Houston and Eastern Railroad Company, by the act 29th January, 1872, extended the line of the road westwardly and in the direction of Vicksburg, over the contemplated route, for which the people of Grenada Co. had voted a subscription of $50,000.00 in aid of a railroad extending from Grenada to Vicksburg; and that the line east of Grenada is over the same route under the amended charter as contemplated by the original charter and the vote of the people in aid of the Grenada, Houston and Eastern R. R. Co.

14. That, so far as they are material to this cause, the following are the acts of the legislature:

Act of Feb. 6th, 1860, incorporating G., H. & E. R. R. Co.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That R. D. Crouder, G. W. Lake, B. C. Adams, J. J. Gage, A. S. Ross, Nathaniel Howard, J. L. Davis, P. Filman, John B. Ross, and R. Richardson, of the county of Yalabusha; Austin Woodward, T. T. Enocks, R. D. Petree, A. M. Reasons, L. Brasher, and
95 C. A. Lewis, of the county of Calhoun; John L. Atkinson, J. M. Thompson, T. S. Evans, Simon Myers, T. N. Martin, B. F. Owen, J. L. S. Hill, A. K. Craig, R. G. Stute, J. T. Griffin, T. M. Blackwell, J. B. Gladney, and W. P. Walker, of the county of Chickasaw; T. M. Rogers, L. F. Gallaway, and A. J. Gillespie, of the county of Monroe, together with those who may hereafter become stockholders in the manner hereinafter provided, their successors and assigns, and the assigns of such assigns be, and they are hereby, created a body corporate,
Name of company. by the name and style of Grenada, Houston and Eastern Railroad Company, and as such shall have perpetual succession; and by that style and name may sue and be sued, and may purchase and receive, hold, and enjoy real and personal estate, and the *and the* same retain to them, their successors and assigns, so far as it shall be necessary for their accommodation and convenience in the transaction of their business, and such as may in good faith be conveyed to them by way of security, or in satisfaction of debt, or by direction, and the same to sell, grant, rent, or otherwise dispose of, and to have and use a common seal, and to alter,
96 break, or renew the *the* same at pleasure; provided said company *said company* shall not be allowed to hold in their own name, or in any other manner, for their use and benefit, more land than is necessary for the convenient use of their railroad hereafter provided for, including

the right of way and grounds proper and necessary *proper necessary* for the depots, fixtures, and buildings pertaining to said road for a longer period than five years after the completion of said road, on pain of forfeiting to the original owners of such land all right and title thereto.

Consolidation may be agreed upon.

SECTION 15. Be it further enacted, That the company hereby incorporated shall have full power and authority to enter into any agreement with the Mississippi Central, the Mobile and Ohio, or any other railroad company for a connection or consolidation with such company upon such terms as may be mutualey agreed upon and not inconsistent with the laws of this State; provided that before any such agreement is consummated it shall be approved and authorized by a vote of the stockholders of said Company, or a ma' of such votes cast at a stockholders' meeting to which such agreement is submitted.

97 An act to aid in the construction of Grenada, Houston, and Eastern Railroad. [*Feb. 10, 1860.]

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the board of police of the several counties, Yalabusha, Calhoun, Chickasa', and Monroe, through which the Grenad', Houston and Eastern Railroad may pass, may, for their respective counties, upon such conditions as they think proper, subscribe for capital stock not to exceed in amount two hundred thousand dollars for any one county: Provided, however, that an election shall be held in the county for and on account of which stock is proposed to be subscribed by the qualified electors thereof, at the regular precincts of said county, twenty days' notice of the time of holding such election, and of the amount proposed to be subscribed, and in what number of installments, being first given by the board of police; and if at said election a majority of the qualified electors voting shall be in favor of said subscription, then said board shall make such subscription for and in behalf of the county for the amount specified by the president of said board of police, subscribing the amount so specified to the capital
98 stock of said company; but if a majority of those voting shall be opposed to said subscription, the same shall not be made.

Act of 25th March, 1871, to amend the preceding.

SECTION 1. Be it enacted by the legislature of the State of Mississippi That the act entitled "An act to aid in the construction of the Grenada, Houston and Eastern Railroad," approved Feb. 10th, 1860, shall apply in all its provisions to Grenada County, and also to any other county in this State through or near which said railroad may pass, and to the officers of the same, as the said act is intended to apply to the counties therein named; and it shall be, and it is hereby, made the duty of the board of supervisors of Grenada County, and of the several counties along the line of said railroad as above designated, upon the petition of twenty-five or more citizens, to cause an election to be held in their respective counties to take the sense of the legal voters thereof whether a sum not exceeding two hundred thousand dollars to each county shall be subscribed to the capital stock of said railroad company, to be paid by taxation, and to do all other

*In pencil.

acts and things which the said act of this act is amendatory
99 authorizes or requires of the boards of police of the counties named in said act. And whenever in said act any duty is required of or act authorized to be performed by the boards of police, or the president thereof, of any of the counties therein named, the same shall apply to the board of supervisors of the different counties and to the president thereof. And all such elections when held shall be conducted in all things as required in the act of which this amendatory, and of the constitution and laws of this State in force at the time so held.

SECTION 2. Be it further enacted, That it shall and may be lawfull for the mayor and selectmen of the towns of Grenada, Okolona, and Houston, or of any other incorporated town along the line of said railroad, for and on behalf of their respective corporations to subscribe for any number of shares of the capital stock of the Grenada, Houston and Eastern Railroad Company, not exceeding two thousand shares each: Provided, however, that all such subscriptions for stock for and on behalf of said incorpo-
100 rated towns shall have been sustained by a constitutional majority of two-thirds of the votes polled at an election regularly held in said towns respectively, to take the sense of the legal voters thereof in reference to said subscription; and all subscriptions for stock so made by said mayor and selectmen of said towns respectively, or by any county in pursuance of this act, or of the act of which this act is amendatory, shall be legal and binding, whether any part of the same be paid at the time of subscribing or not.

Lawfull to issue bonds. SECTION 4. Be it further enacted, That it shall and may be lawfull for the boards of supervisors of any county which shall have voted a tax as provided by this act, or of the act to which this amendatory, to issue bonds, due and payable at such time or times as said boards of supervisors may deem best for the tax-payers of their respective counties, not to extend beyond ten years from the date of issuance, for such sums as said boards of supervisors may deem necessary to meet, pay off, and discharge the subscriptions of said counties, respectively, for capital stock in the Grenada, Houston and Eastern Railroad Company, which have
101 been, or which may hereafter be, subscribed for by said boards of supervisors, or by the boards of police (as the case may be) respectively, not to exceed the total sum of such stock subscriptions; which said bonds shall be signed by the president of the board of supervisors issuing the same, and be made payable to the president and directors of the Grenada, Houston and Eastern Railroad Company, and their successors and assigns, and may be assigned, sold, and conveyed, with or without guarantee of payment, by the said president and directors, or may be mortgaged in like manner at their discretion as they may deem best for the company.

SECTION 6. Be it further enacted, That any and all of the bonds author-
Rate of interest on bonds. ized to be issued by this act may be drawn and issued with coupons of interest attached at a rate of interest not to exceed ten per cent. per annum from the date of issuance; and when so issued the said bonds may be, by the boards of supervisors or by the mayor and selectmen issuing the same, paid over and delivered to the president of the Grenada, Houston and Eastern Railroad Company in payment and
102 in satisfaction for the stock subscription of the county or corpora-

tion so issuing them, to the extent of the principal sum of said bonds. And whenever any such subscription for stock shall have been so paid off and discharged by the issuance and delivery of bonds, as provided for in this act, the board of supervisors, or the mayor and selectmen so issuing, shall take from the president and directors of said railroad company, proper certificates of stock in said company for the number of shares so paid for, and the stock so paid for shall be deemed and held to be the property of the county, or the corporation, as the case may be, so paying for the same until assigned or transferred, as authorized by this act, or the act of which this act is amendatory.

SECTION 9. Be it further enacted, That in order further to facilitate the building of the Grenada, Houston and Eastern Railroad the said company, by and through its organized board of directors, shall have full power and authority as the said board of directors may deem best to effect an early and certain completion of the said railroad as contemplated by its
103 charter, to enter into *to enter into* any contract or agreement with any other railroad company for a connection or consolidation with or for a transfer of its capital stock and its franchise to such company or corporation, upon such terms as may be mutually agreed upon by said contracting parties, and not contrary to the constitution or laws of this State or of the United States, and also to adopt such name as may be agreed upon by the contracting parties.

SECTION 11. Be it further enacted, That all laws of this State conflicting with the provisions of this act are hereby repealed, and that this act take effect and be in force from and after its passage.

An act to amend the several acts aforesaid, [*27th Jan'y, 1872].

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the act of the said legislature, entitled "An act to incorporate the Grenada, Houston and Eastern Railroad Company," approved Feb. 6th, 1860, be, and the same is hereby, so amended and so extended as to authorise the said Grenada, Houston and
104 Eastern Railroad Company, as now organized under the act aforesaid incorporating said railroad company, to construct an extension of said railroad from the town of Grenada, in Grenada County, Mississippi, to the city of Vicksburg, by the way of Yazoo City, or by such other route as the board of directors of said company may deem best for the company aforesaid. And the said railroad company is hereby authorized and empowered to survey, lay out, and construct an extension of the said Grenada, Houston and Eastern Railroad from the town of Grenada to the city of Vicksburg in the same way and manner, with like powers, rights, and privileges, and under the same restrictions and liabilities as by the act incorporating said company, and by the several acts in aid of the construction of the Grenada, Houston and Eastern, the said company is authorized to lay out and construct said railroad from Grenada eastward to the Alabama line.

Change of name of road.

Authority to extend the road to Vicksburg.

SECTION 2. Be it further enacted, That from and after the date hereof the Grenada, Houston and Eastern Railroad Company shall be
105 known and designated as the Vicksburg and Nashville Railroad Company, and by that name and style shall hereafter sue

Name of road.

*In pencil.

and be sued, plead and be impleaded in any court of this State, and all subscrip. of stock to or bonds issued for the benefit of the Grenada, Houston and Eastern Railroad Company are hereby made payable to and collectible by the Vicksburg and Nashville Railroad Company, and the title to all property of every description and kind whatsoever, whether real, personal, or mixed, which by law heretofore vested in the Grenada, Houston and Eastern Railroad Company is hereby invested in the Vicksburg and Nashville Railroad Company, to be collected, used, sold, transfer'ed, or enjoyed by said company as by law the Grenada, Houston and Eastern Railroad Company might have collected, used, sold, transfer'ed, or enjoyed the same; and all contracts and obligations heretofore entered into by the Grenada, Houston and Eastern Railroad Company, and all debts of whatsoever kind due by the said company, are hereby made the debts and contracts and obligations of the Vicksburg and Nashville Railroad Company, which shall be liable therefor as
106 fully in every particular as the Grenada, Houston and Eastern Railroad Company might have been; and all certificates of stock in the Grenada, Houston and Eastern Railroad Company heretofore issued shall entitle the holder to an equal number of shares in the Vicksburg and Nashville Railroad Company, and when required the secretary of the company shall take up the certificates of the Grenada, Houston and Eastern Railroad Company and substitute those of the Vicksburg and Nashville Railroad Company; and the act of the legislature of Mississippi incorporating the Grenada, Houston and Eastern Railroad Company, approved February 6th, 1860, and the several acts of the legislature passed to aid in constructing the Grenada, Houston and Eastern Railroad are hereby made to apply to the Vicksburg and Nashville Railroad Company and to the several counties and towns through or near which the said Vicksburg and Nashville Railroad shall pass with all their force and effect as the same are intended to apply to the counties of Grenada, Calhoun, and Chickasaw.

Authority to transfer stock bonds, & liabilities, &c.

107 SECTION 3. Be it further enacted, That upon application by the president or other authorized agent of the Vicksburg and Nashville Railroad Company to the board of supervisors of any county through which the Vicksburg and Nashville Railroad shall or may pass, and upon a like application to the constituted authorities of any incorporated city or town through or near which said road may pass, for a subscription by such county, city, or town to the capital stock of the said Vicksburg and Nashville Railroad Company, in any sum not exceeding five hundred thousand dollars, it shall be the duty of the boards of supervisors of the counties or of the constituted authorities of the incorporated cities or towns to whom such application is made, and they are hereby required without delay to submit the question of "subscription" or "no subscription" to the qualified voters of the county, city, or town so applied to at a special or regular election to be held therein; and if two-thirds of the said qualified voters be in favor of such subscription the said board of supervisors, or the mayor and selectmen of cities and
108 towns, as the case may be, are hereby authorized and required without delay to subscribe to the capital stock of said company for and in behalf of such county, city, or town the amount agreed upon and so

How the question of subscription to stock may be determined.

How bonds may be issued to road by counties, cities, and towns.

submitted; and bonds of the city, county, or town making the subscription having such time to run and such rates of interest as may be agreed upon, shall upon demand of the president or any authorized agent of the company, be issued without delay by the board of supervisors of the county or the corporate authorities of the cities or towns, and shall be signed by the president of the board of supervisors or by the mayor or other presiding officer of the incorporated city or town issuing the same; and the said bonds shall, after their execution as aforesaid, be delivered to the president and directors of the said railroad company to the amount of said subscription to the capital stock of said company; and an assessment shall be made within the proper time upon the tax-payers of said counties, cities, or towns making the subscription to pay the principal an' interest upon said bonds so issued as the same may or shall fall due; and certificates of shares of the capital stock of said railroad company shall be issued by the said railroad company on the reception of the bonds aforesaid in favor of the counties, cities, or towns, to the amount of the principal of the bonds and the interest paid thereon; and said certificates of shares of stock shall be held as the property of the said counties, cities, and towns, respectively, by which the same shall be so subscribed, until the same shall be assigned or transferred to the tax-payer or other person holding the railroad tax receipt, as provided by the third section of the act of the legislature of the State of Mississippi, to aid in the construction of the Grenada, Houston and Eastern Railroad, approved February 10th, 1860, which act is hereby so amended as to apply to the tax-payers of any city or town; and the mayor of said city or town is hereby authorized and empowered to transfer shares of stock to the tax-payer of an incorporated town as fully as by the said act the president of the board of supervisors is authorized to transfer shares to the tax-payer of a county.

To whom bonds shall be issued.

Assessment to be made for payment of interest and bonds.

109

SECTION 4. Be it further enacted, That inasmuch as the question of subscription or no subscription for fifty thousand dollars to aid in the construction of a railroad from Vicksburg to Grenad', in this State, was, by the board of supervisors of Grenada County, submitted to the qualified voters of Grenada County, and the same was sustained by a majority of two-thirds of the qualified voters of said county at a general election held therein on the 7th day of November, 1871, it shall and may be lawful for the board of directors of the Vicksburg and Nashville Railroad Company, by resolution made and entered in the minutes of said board at a regular meeting thereof, sanctioned by a majority of said board of directors, to accept all the provisions of this act, and adopt, as a part and portion of the Vicksburg and Nashville Railroad, the extension specified in this act from Grenada to Vicksburg; and when, after such acceptance and adoption, the said so-called Vicksburg and Grenada Railroad shall form and constitute a part and portion of the Vicksburg and Nashville Railroad, and shall be constructed, owned, and held by the Vicksburg and Nashville Railroad Company; and it shall be lawful for, and it is hereby made the duty of the board of the supervisors of Grenada County, through the president of said board, upon the application of the president or other

110

Company may accept subscription heretofore made to the Vicksburg and Grenada Railroad.

111

Duty of board of supervisors of Grenada County to subscribe $50,000 worth of stock.

authorized agent of the Vicksburg and Nashville Railroad Company, to subscribe for fifty thousand dollars of the capital stock of the Vicksburg and Nashville Railroad Company, based upon the submission to and the approval of the vote of two-thirds of the qualified voters of said county, which is hereby ratified and confirmed to the Vicksburg and Nashville Railroad Company so heretofore had on behalf of the Vicksburg and Grenada Railroad as aforesaid, and bonds of said county *and bonds of said county* to secure the payment of said subscription for the stock and interest thereon, and also certificat's of stock in said company shall be used as in other cases provided for in this act.

SECTION 5. Be it further enacted, That the said Vicksburg and Nashville Railroad Company be, and the same is hereby, authorized, under the same restrictions and with the like privileges granted to the main line,
112 to locate, construct, manage, control, maintain, equip, use, and operate a branch line of said railroad from some point on the main line, running in a' eastern direction to the Mississippi River to a point opposite to Eunice, in the State of Arkansas, or to such other point as the directors of said railroad company may select; and said company is further authorized to locate, construct, manage, control, maintain, use, and operate a branch line of said railroad from some suitable point on the main line in an eastern direction to the Alabama line, and such other branches as the said directors may deem proper in response to the wants of the country.

SECTION 7. Be it further enacted, That said company is hereby authorized and empowered to own and hold or charter, in whole or in part, one or more steamboats or other crafts for navigating the Mississippi, the Yazoo, or Tennes'ee Rivers and their tributaries; and with such steamboats or other water crafts they may transfer persons and property upon the said rivers and their tributaries, within or without the limits of this State,
113 upon such terms as the board of directors may deem proper not inconsistent with the laws of this State or of the United States.

Authority to cross or intersect with other roads, etc.

SECTION 8. Be it further enacted, That said company is hereby authorized to cross, intersect, join, and unite its railroad and branches with any other railroad heretofore or hereafter constructed in the State of Mississippi at any points on their routes and upon the ground of such other railroad company, with the necessary turnouts, sidings, switches, and other conveniences in furtherance of the objects of its connections, and every railroad company in the State whose railroad shall be intersected hereafter by the railroad and branches of this company shall unite with it in forming such intersections and connections and grant the facilities aforesaid; and if the said railroad company and those heretofore

How cases of disagreement shall be settled.

and hereafter constructed in the State of Mississippi cannot agree upon the points and manner of such crossings, intersections, and connections, and the division and apportionment of the cost and expense of the same between said companies, and the division and apportionment between the companies of the tolls received for trans-
114 portation, the same shall be ascertained and determined by commissioners to be appointed by the chancery court of any county where said intersecting railroad is situated.

SECTION 9. Be it further enacted, That said company be, and the same

May adopt their own gauge.

is hereby, authorized to adopt such gauge for said road as shall conform to the gauge of any other road with which they may wish to connect or consolidate, or such gauge as the directors of said company may consider best for the interest of the company.

SECTION 10. Be it further enacted, That all acts or parts of acts inconsistent with the provisions of this act be, and the same is hereby, repealed.

15. Of the Vicksburg and Nashville Railroad there were graded & bridged at the Okalona end about twenty miles westward, of which about five miles were ironed. At Grenada, eastward, about eight miles graded. The line of the road from Okalona to Grenada was surveyed and located, and from Grenada to Greenwood (on the way to Vicksburg) surveyed, and part of it located. An execution from the United States court for
115 the northern district of Mississippi, in favor of Alfred Marchand, of New Orleans, for *for* the sum of ninety-three hundred dollars and costs, was levied on the road on the day of October, 1878; and on the 1st day of December, 1878, the road was sold thereunder to W. L. Nugent, agent of said Marchand, for the sum of eight hundred and twenty-one $\frac{51}{100}$ dollars. The company did not resist the sale, because they hoped to effect a new organization with Marchand as a member. That has not been done yet. Marchand is now proposing to go in as a member of a new company. No work has been done on said road, and no meeting of stockholders has been had since 1874, or of the directors thereof since July the 6th, 1875, and at that meeting of July 6th, 1875, the following resolution was by the directors adopted, it being the last entry on the minute book of the company.

OCOLONA, MISS., *July 6th*, 1875.

T. N. Martin offered the following:

Whereas the labor of construction of the road is necessarily temporarily suspended until the decision of the supreme court shall have been
116 in the case now pending in said court, and whereas but little labor will be required of the officers of the company until work on the road shall resumed; it is therefore resolved by this board of directors that the regular salaries of said officers, namely, the president, secretary, and treasurer, chief engineer, and attorneys, be suspended until this board of directors shall deem it right and proper the same be allowed and paid, this board, deeming it right to pay said officers at present only such sums as will reimburse said officers all such needfull expenses and outlays as the business of their respective officers may require.

Adopted.

16. The iron laid on the five miles of track as above stated was bought from the plaintiff, and the bonds sued were given in payment therefor, and no other payment has been made. The bonds were executed by the president and clerk of the board as averred, and the copy filed with the declaration is correct.

17. And thereupon the court instructed the jury as follows, to wit:

BROGDEN AN' CO.
vs.
GRENADA COUNTY.

117 The court instructs the jury as follows:

This is an action of debt brought by the plaintiff against the

board of supervisors of Grenada County, to recover the amount due upon the bonds and coupons described in the declaration. The defense is that these bonds and coupons were issued without authority of law, and therefore void, and not binding obligations upon the defendants or the tax-payers of this county of Grenada.

The agreed state of facts read to you is submitted in place of the evidence on both sides, and from which you will find your verdict under the rules of law applicable thereto, which the court will state to you, and by which you will be governed.

1st. The plaintiffs being admitted to be bona fide holders of these bonds and coupons for value, and without notice of any defences thereto, except such notice as the law charges them with, they are entitled to a verdict for the sum due thereon, unless there was a want of legislative authority in the board of supervisors or their officers to make the subscription
118 for the capital stock in the Grenada, Houston and Eastern Railroad Company and to issue said bonds and coupons in payment of same.

2nd. Section 1 of an act of the legislature of this State, entitled an act to aid in the construction of the Grenada, Houston and Eastern Railroad, which became a law on the 23 day of March, 1871, conferred upon the board of supervisors of Grenada County the authority, upon the petition of twenty-five or more of the citizens of said county, to cause an election to be held in said county to take the sense of the voters of the county, whether or not said board of supervisors should subscribe for capital stock in said railroad company, not to exceed the sum of two hundred thousand dollars; and provided further, that when said election should be held, it should be conducted in all things as required in the act to which the same may be amendatory, and of the constitution and laws of the State in force at the time said election should be held. The present constitution of this State was then in force which required to justify and render
119 said subscription valid, that two-thirds of the qualified voters of said county should vote in favor of said subscription. The court instructs you that this section of said act conferred authority upon said board of supervisors to make said subscription of capital stock upon compliance with the conditions therein prescribed, and that the plaintiffs, as such bona fide holders, were not required to look further than to see that this authority was conferred, and that as the bonds upon their face recite that the provisions of said act were complied with, the defendants are estopped from denying that they were so complied with.

3. The 4th section of said act authorize' the issuance of the bonds with the interest coupons attached, in payment of said stock.

The act of the legislature of this State, entitled an act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company, approved Jan. 27, 1872, by the 2nd section thereof changed the name of said Grenada, Houston and Eastern
120 Railroad Company to that of the Vicksburg and Nashville Railroad Company, and conferred upon said company under said new name all the property, rights, and privileges held by said company under its former name, so that these bonds and coupons were properly issued and made payable to said Vicksburg and Nashville Railroad Company.

The court instructs you that the agreed statement of facts does not con-

stitute a valid defense to a recovery of the amount due upon the bonds and coupons described in the declaration under the rules of law applicable thereto. That under the different acts of the legislature the railroad company had the right to consolidate their company and road with that of any other, and to extend their road in the direction of Vicksburg, and that such consolidation or the issuance of bonds to complete the same, did not invalidate the bonds and coupons in the hands of a bona fide purchaser and holder for value and without notice; you will therefore find in your
121 verdict the amount of the bonds described in the declaration, with 8 per cent. interest per annum thereon, since the maturity thereof, respectively. Also the amount of the coupons attached thereto, as described in the declaration, together with interest thereon at six per cent. per annum, since the same became due and payable.

Filed Dec. 17, 1880. G. R. Hill, clerk.

18. And defendant, by its counsel, before said instructions were given, objected to the same, which objection was by the court overruled, and said instructions given. Whereupon defendant tendered this his bill of exceptions, which is by court allowed, and is signed, sealed, and made a part of the record in said cause this the 31st day of December, 1880.

R. A. HILL, *Judge.*

We agree that the above be signed as the bill of exceptions by the court. Feb. 26th, 1881.

HOUSTON AND REYNOLDS,
Pl'ffs' Attorney.

Filed April 14, 1881, as of 31st Dec., 1880. G. R. Hill, clerk.

122 UNITED STATES OF AMERICA,
Northern District of Mississippi:

I, G. R. Hill, clerk of the district court of the United States for said district, do hereby certify that the foregoing 119 pages hereto attached is a full, true, perfect, and correct transcript of all of the proceedings had in said court, as the same now appears of record and upon the file in my office, in the following cause, to wit, J. Brogden & Co. vs. The Board of Supervisors of Grenada County.

In testimony whereof I have hereunto set my name and affixed the seal of said court at office, at Oxford, this the 28 day of Sept., A. D. 1881.

[SEAL.] G. R. HILL, *Clerk.*

123 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the northern district of Mississippi, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between Reuben P. Main, Washington C. De Pause, Jesse J. Brown, John S. McDonald, Morris McDonald, Mary A. Rapsley, William S. Coulbertson, and Dilliard Ricketts, partners, under the firm name of J. Brogdon & Co., plaintiffs, and Wiley H. Powell, as president, and A. K. Turner, Henry

Trussell, R. C. Weir, and P. M. Miller, as members of the board of supervisors of Granada County, Mississippi, defendants, a manifest error hath happened, to the great damage of the said Wiley H. Powell, A. K. Turner, Henry Trussell, R. C. Weir, and P. M. Miller, and to said county of Grenada, as by their complaint appears:

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that under
124 your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 15th day of September, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] GEO. R. HILL, *Judge,*
Clerk of the District Court of the United States for the Northern District of Mississippi.

Allowed by

R. A. HILL,
Judge of the District Court of the United States for the Northen District of Mississippi.

Filed Sept. 15th, A. D. 1881. G. R. Hill, clerk.

125 UNITED STATES OF AMERICA,
District of Columbia:

In the Supreme Court of the United States. To the October term, 1881.

THE BOARD OF SUPERVISORS OF THE COUNTY of Grenada
vs.
J. BROGDEN & CO. } No. 950.

We, the attorneys of record for the defendants in error in the above-entitled cause, do hereby waive the issuance and service of citation, and authorize the clerk of the Supreme Court of the United States to enter the appearance of said defendants in error in said cause.

Northern district of Mississippi, October the 6, 1881.

H. L. MULDROW,
Att'y for J. Brogdon & Co., Defendants in Error.

(Indorsed:) Supreme Court U. S. 1881. October term. No. 950. Board of Supervisors of Grenada County, pl'ff in error. J. Brogden & Co. Waiver of citation. Filed 24 Oct'r, 1881. Office Supreme Court U. S. Filed Oct. 24, 1881. James H. McKenney, clerk.

126 UNITED STATES OF AMERICA,
District of Columbia:

In the Supreme Court of the United States. To October term, 1881.

THE BOARD OF SUPERVISORS OF THE COUNTY of Grenada
v.
J. BROGDEN & CO.

We, the attorneys of record for the defendants in error in the above-entitled cause do hereby waive the issuance & service of citation, and authorize the clerk of the Supreme Court of the United States to enter the appearance of said defendants in error in said cause.

Northern district of Mississippi, October the 6, 1881.

HOUSTON & REYNOLDS,
Att'ys for J. Bragdon & Co.

(Indorsed:) Supreme Court U. S. 1881. October term. No. 950. Board of Supervisors Genada Co., pl'ff in error. J. Brogden & Co. Waiver of citation. Filed 24 Oct'r, 1881. Office Supreme Court U. S. Filed Oct. 24, 1881. James H. McKenney, clerk.

(Indorsement on cover:) No. 609. The Board of Supervisors of Grenada County; Wiley H. Powell, president, &c., et al., plaintiff in error, vs. J. Brogden & Company, a firm composed of Reuben P. Main, Washington C. De Pause et al. N. Mississippi, d. c. U. S. Filed 4th October, 1881.

112-261

FILED
NOV. 2 1882

SUPREME COURT OF THE UNITED STATES.

No. 609.

THE BOARD OF SUPERVISORS OF GRENADA COUNTY, WILEY F. POWELL, President, *et als*,

Plaintiffs in Error.

vs.

J. BROGDEN & CO., a firm composed of REUBEN P. MAIN, WASHINGTON C. DEPAUSE, *et al*,

Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR PLAINTIFFS IN ERROR.

By H. P. BRANHAM, Attorney.

R. & T. A. ENNIS, PRINTERS, 118 AND 120 OLIVE STREET, ST. LOUIS.
1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

THE BOARD OF SUPERVISORS OF THE COUNTY OF GRENADA, *et al*,

Plaintiffs in Error.

vs. } No. 609.

J. BROGDEN & CO., &c.,

Defendants in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This action is brought to recover on certain bonds and coupons, issued by Grenada County on the 1st of May, 1872, to meet and pay off an alleged subscription to the capital stock of the Vicksburg & Nashville Railroad Company.

On the 6th February, 1860, the Legislature of Mississippi incorporated the Grenada, Houston & Eastern Railroad Company; empowering it to construct a railroad from the town of Grenada, in Yalobusha County, to Houston, in Chickasaw County, and eastward to the Alabama line, and empowering it to receive stock subscriptions, not to exceed six millions of dollars.*

* Acts 1859-60, p. 393.

On the 10th February, 1860, the legislature authorized the board of Police "of the several counties, Yalobusha, Calhoun, Chickasaw and Monroe, through which the G., H. & E. R. R. may pass," to subscribe for capital stock not to exceed two hundred thousand dollars for any one county; *provided*, that at an election held for the purpose, a majority of the qualified voters of the county voting shall be in favor of such a subscription.*

On the 1st December, 1869, the new constitution of Mississippi went into effect, sec. 14, art. 12 of which prohibited the legislature from authorizing any county to become a stockholder in any corporation unless two-thirds of the voters of the county assented at an election held for the purpose.†

On the 9th May, 1870, Grenada County was created out of parts of Yalobusha, Tallahatchie, Carroll and Choctaw Counties.‡

On the 20th March, 1871, the legislature passed a bill which became a law by limitation on the 25th, and which provided that the act of February 10th, 1860, should "apply in all its provisions to Grenada County, and also to any other county in this State, through or near which said railroad may pass, and to the officers of the same, as the said act is intended to apply to the counties therein named." Section 4 authorized the issuance of coupon bonds to meet and pay off the subscriptions of any counties, made either previously or subsequently to the passage of the act.§

During the year 1871, a scheme was agitated in Grenada County, about to this effect: that a railroad should be built, popularly known as the Vicksburg & Grenada Railroad, to have its northern terminus at Grenada, its route down the Yazoo Valley and through Yazoo City, its southern terminus at Vicksburg, and to have a capital stock of about

* Acts 1859-60, p. 412.

† Constitution 1869, sec. 14, art. 12. The State *vs.* Williams, 49 Miss., 640.

‡ Acts 1870, p. 124.

§ Acts 1871, p. 180.

five millions of dollars; another railroad, called the Grenada, Houston & Eastern Railroad, to be built, with its eastern terminus at Grenada, its route eastwardly and northerly to the Alabama line, and contemplated extension to Nashville, and to have a capital stock of about six millions of dollars; the two companies to be distinct companies, with distinct boards of directors, and distinct stock subscriptions. The consummation of this scheme would have made Grenada the centre of a mesh of four railroads (counting the Mississippi Central and the Mississippi & Tennessee, then already built), of which three would have their terminus there. On the 7th of November, 1871, a proposition to subscribe $50,000.00 towards the stock of each of these projected roads was submitted to the people as a joint proposition, and carried; a distinct subscription being voted to each railroad. At the time of such submission and vote, there was no such company incorporated as the Vicksburg & Grenada Railroad; but on the 3d of January, 1872, the projectors of that scheme, and the persons actually intended by said vote, were incorporated under the name of the Vicksburg, Yazoo Valley & Grenada Railroad Company.* On the 27th of January, 1872, the charter of the Grenada, Houston & Eastern Railroad Company was amended, the line of the road being extended southwestwardly to Vicksburg, over the line just granted exclusively to the V., Y. V. & G. R. R., and it was authorized to construct extensive branch roads and to set up lines of steamboats to navigate the Mississippi river and its tributaries, and no increase of its capital stock allowed, and the name of the company changed to the Vicksburg & Nashville Railroad Company.† On the 31st January 1872, the said H. & E. R. R. Co., accepted the amendment to their charter. On the 3d of March, 1872, the V. & N. R. R. Co. consolidated with the Vicksburg, Yazoo Valley & Grenada R. R. Co., placing one of the directors of the above company on the board of the

* Acts 1872, p. 319, sections 1 and 2.

† Acts 1872, p. 286, sections 1, 2, 4, 5, 7.

new company, and retaining the name of the V. & N. R. R. Co. On the 6th of March, 1872, the Board of Supervisors appointed proxies to represent the county at the stockholders' meeting of the V. & N. R. R. Co., and thenceforward sent various parties to represent the county at all such meetings, on a basis of the stock issued, that is to say, $50,000.00 from 6th March, 1872, and $100,000.00 from 8th October, 1872. Up to the 3d day of March, 1872, we claim that the subscription of the county to the companies had not been consummated. The stock was issued to the county in two lots of $50,000 each; the first, being that due for the G. H. & E. R. R. subscription, was issued after the said 8th March; the second, being that due for the Vicksburg & Grenada R. R. subscription, was issued after the 8th October aforesaid. The bonds of the county were issued by the board in payment of said stock, bearing date 2d of May, 1872, in two lots of $50,000 each; one lot being the bonds numbered from 151 to 250, were in payment of the sum voted to the V. & G. R. R., and the others in payment of that voted to the G. H. & E. R. R. Some of each lot are sued on. Of the Vicksburg & Nashville Road proper, only five miles (at the eastern end) was ever completed, some grading and bridging being done also; of the Vicksburg extension not a foot was even graded. No work has been done on the road, and no meeting of the stockholders has been held since 1874, or of the directors since the 6th of July, 1875, and on said last named day the directors passed a resolution suspending the salaries of all officers because of the suspension of work. On the 1st of December, 1878, the road was sold to one Marchand, under execution for $9,309.00 and costs, and was bid in by him at the sum of $821 50.

All the questions raised by the assignment of errors arise on the instructions of the court to the jury. *Page 117 of transcript.

We append such portions of the various acts of the legislature, &c., as are pertinent to this argument:

Act of February 6th, 1860, incorporating G. H. & E. R. R. Co.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That R. D. Crouder * * * * together with those who may hereafter become stockholders in the manner hereinafter provided, their successors and assigns, and the assigns of such assigns be, and they are hereby created a body corporate, by the name and style of Grenada, Houston and Eastern Railroad Company, and as such shall have perpetual succession; and by that style and name may sue and be sued, and may purchase and receive, hold and enjoy personal and real estate, and the same retain to them, their successors and assigns, so far as it may be necessary for their accommodation and convenience in the transaction of their business, and such as may in good faith be conveyed to them by way of security, or in satisfaction of debt, or by direction, and the same to sell, grant, rent or otherwise dispose of, and to have and use a common seal, and to alter, break and renew the same at pleasure; provided said company shall not be allowed to hold in their own name, or in any other manner, for their use and benefit, more land than is necessary for the convenient use of their railroad hereafter provided for, including the right of way and grounds proper and necessary for the depots, fixtures, and buildings pertaining to said road for a longer period than five years after the completion of said road, on pain of forfeiting to the original owners of such land all right and title thereto.

SECTION 15. *Be it further enacted*, That the company hereby created shall have full power and authority to enter into any agreement with the Mississippi Central, the Mobile & Ohio, or any other railroad company for a connection or consolidation with such company upon such terms as may be mutually agreed upon, and not inconsistent with the laws of this state: *provided* that before any such agreement is consummated it shall be approved and authorized by a vote of the stockholders of said company,

or a majority of such votes cast at a stockholders' meeting to which such agreement is submitted.

AN ACT to be entitled an Act to aid in the construction of the Grenada, Houston and Eastern Railroad.

SEC. 1. *Be it enacted by the Legislature of the State of Mississippi*, That the Board of Police of the several counties, Yalobusha, Calhoun, Chickasaw and Monroe, through which the Grenada, Houston and Eastern Railroad may pass, may, for their respective counties, open (*upon*) such conditions as they may think proper, subscribe for capital stock not to exceed in amount two hundred thousand dollars, for any one county; *Provided, however*, That an election shall be held in the county for and on account of which stock is proposed to be subscribed by the qualified electors thereof, at the regular precincts of said county, twenty days notice of the time of holding such election, and of the amount proposed to be subscribed, and in what number of installments being first given by the board of police; and if at said election a majority of the qualified electors voting shall be in favor of such subscription, then said board shall make such subscription for and in behalf of the county, for the amount specified by the president of said board of police, subscribing the amount so specified to the capital stock of said company, but if a majority of those voting shall be opposed to such subscription, the same shall not be made.*

* * * * * *

Approved, Feb. 10, 1860.

*The remaining sections merely provide for the collection of the amount subscribed by taxation, the mode of collection, &c.

NEW CONSTITUTION OF MISSISSIPPI.

ARTICLE XII.

* * * *

SEC. 14. The Legislature shall not authorize any county, city, or town, to become a stockholder in, or to lend its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city or town, at a special election, or regular election, to be held therein shall assent thereto.

* * * *

RATIFIED, Dec. 1, 1869.

An Act entitled an Act to create Grenada County:

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, that an additional county shall be and is hereby created in this State, to be called Grenada County, to be bounded, &c., &c.

SECTION 6. *Be it further enacted*, That the seat of justice of said county of Grenada, shall be and is hereby located at the town of Grenada, in said county.

APPROVED, May 9, 1870.

A BILL to be entitled an Act to amend an Act entitled "an Act to aid in the construction of the Grenada, Houston and Eastern Railroad," approved February 10, 1860:

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the act entitled an act to aid in the construction of the Grenada, Houston and Eastern Railroad, approved February 10, 1860, shall apply in all its provisions to Grenada county, and also to any other county in this State, through or near which said railroad may pass, and to the officers of the same, as the said act is intended

to apply to the counties therein named, and it shall be and is hereby made the duty of the board of supervisors of Grenada county, and of the several counties along the line of said railroad as above designated, upon the petition of twenty-five or more citizens, to cause an election to be held in their respective counties to take the sense of the legal voters thereof, whether a sum not exceeding two hundred thousand dollars to each county, shall be subscribed to the capital stock of such railroad company to be paid by taxation, and to do all other acts and things which the said act, of which this act is amendatory, authorizes or requires of the boards of police of the counties named in said Act. And wherever in said Act, any duty is required of, or act authorized to be performed by the boards of police or the president thereof of any of the counties therein named, the same shall apply to the board of supervisors of the different counties, and to the president thereof. And all such elections, when held, shall be conducted in all things as required in the act of which this is amendatory, and of the constitution and laws of this State in force at the time so held.

SECTION 2. *Be it further enacted*, That it shall and may be lawful for the mayor and selectmen of the towns of Grenada, Okalona, and Houston, or of any other incorporated town along the line of said railroad, for and on behalf of their respective corporations to subscribe for any number of shares of the capital stock of the Grenada, Houston and Eastern Railroad Company, not exceeding two thousand shares each: Provided, however, that all such subscriptions for stock for and on behalf of said incorporated towns shall have been sustained by a constitutional majority of two-thirds of the votes polled at an election regularly held in said towns respectively, to take the sense of the legal voters thereof in reference to said subscription; and all subscriptions for stock so made by said mayor and selectmen of said towns respectively, or by any county in pursuance of this act, or of the act of which this act is amen-

datory, shall be legal and binding, whether any part of the same be paid at the time of subscribing or not.

SECTION 4. *Be it further enacted*, That it shall and may be lawful for the boards of supervisors of any county which shall have voted a tax as provided by this act, or of the act to which this is amendatory, to issue bonds; due and payable at such time or times as said boards of supervisors may deem best for the tax-payers of their respective counties, not to extend beyond ten years from the date of issuance, for such sums as said boards of supervisors may deem necessary to meet, pay off, and discharge the subscriptions of said counties, respectively, for capital stock in the Grenada, Houston and Eastern Railroad Company, which have been, or which may hereafter be, subscribed for by said boards of supervisors, or by the boards of police (as the case may be) respectively, not to exceed the total sum of such stock subscriptions; which said bonds shall be signed by the president of the board of supervisors issuing the same, and be made payable to the president and directors of the Grenada, Houston and Eastern Railroad Company, and their successors and assigns, and may be assigned, sold, and conveyed, with or without guarantee of payment, by the said president and directors, or may be mortgaged in like manner at their discretion as they may deem best for the company.

SECTION 6. *Be it further enacted*, That any and all of the bonds authorized to be issued by this act may be drawn and issued with coupons of interest attached at a rate of interest not to exceed ten per cent. per annum from the date of issuance; and when so issued the said bonds may be, by the boards of supervisors or by the mayor and selectmen issuing the same, paid over and delivered to the president of the Grenada, Houston and Eastern Railroad Company in payment and in satisfaction for the stock subscription of the county or corporation so issuing them, to the extent of the principal sum of said bonds. And whenever any such subscription for stock shall have been

so paid off and discharged by the issuance and delivery of bonds, as provided for in this act, the board of supervisors, or the mayor and selectmen so issuing, shall take from the president and directors of said railroad company, proper certificates of stock in said company for the number of shares so paid for, and the stock so paid for shall be deemed and held to be the property of the county, or the corporation, as the case may be, so paying for the same until assigned or transferred, as authorized by this act, or the act of which this act is amendatory.

SEC. 9. *Be it further enacted*, That in order to further facilitate the building of the Grenada, Houston & Eastern Railroad, the said company, by and through its organized board of directors, shall have full power and authority, as the said board of directors may deem best, to effect an early and certain completion of the said railroad as contemplated by its charter, to enter into any contract or agreement with any other railroad company for a connection or consolidation with or for a transfer of its capital stock and its franchise to such company or corporation, upon such terms as may be mutually agreed upon by said contracting parties, and not contrary to the Constitution or laws of this State or of the United States, and also to adopt such name as may be agreed upon by the contracting parties.

SEC. 11. *Be it further enacted*, That all laws of this State conflicting with the provisions of this act are hereby repealed, and that this act take effect and be in force from and after its passage.

"*An act to incorporate the Vicksburg, Yazoo Valley & Grenada Railroad Company.*"

SECTION 1. *Be it further enacted by the Legislature of the State of Mississippi*, That William R. Miles, J. D. Leflore, * * * and their associates, be, and they are hereby incorporated into and constituted a body politic and corporate, under the name and style of the "Vicksburg, Yazoo Valley & Grenada Railroad Company," and

by that name are hereby authorized to have and to hold real and personal property for the objects, business and purposes of said corporation within this State, to make contracts, to sue and be sued, to make rules and regulations and by-laws; also ordinances for the management, direction and control of said corporation not inconsistent with the laws of the State of Mississippi, and to the provisions stated and set forth in this act, and to have, enjoy and exercise all the rights, powers and privileges pertaining to corporate bodies, and necessary for the objects and purposes of this act, with the privilege and authority to exercise corporate power within the State of Mississippi.

SEC. 2. *Be it further enacted*, That the general purposes and objects of this corporation, the pursuit and furtherance of which are hereby granted, are hereby defined to be as follows: First, to have the exclusive right to *contract* [construct] and build and thereafter to own and maintain and manage and use a railroad upon such a course and such a route and with such a track or tracks thereupon as may be deemed by a majority of the directors of said corporation proper, expedient and best adapted and for the public accommodation, from some suitable point in or near the city of Vicksburg, towards and to a point (by way of Yazoo City, in Yazoo County,) at or about the connexion of the Mississippi & Tennessee Railroad, in the town of Grenada, in *Yalobusha* [Grenada] County, State of Mississippi; second, to take, transport, carry and convey passengers and property upon said railroad by power of steam, or by any other power, and to receive for such transportation, carriage and conveyance, such toll and charges as shall be from time to time established, fixed and regulated by the directors of said corporation.

SEC. 13. *Be it further enacted*, That this corporation is hereby authorized and empowered to enter into any contract with any railroad company or companies, corporation or corporations, within or without the limits of this State, by which the railroad of such companies or corporations shall be consolidated with the railroad of this corporation,

or any parts of the same, and form one continuous or connecting railroad, to be known by one common name, and by which the capital stock of this corporation, and such other companies or corporations shall become merged and consolidated into one joint and common stock, and be and exist in one company or corporation, with one seal, one president, one vice-president, and one board of directors; and such company or corporation, so formed, shall have, possess and enjoy in this State all the powers, franchises, rights and privileges granted to or vested in this corporation by virtue of this act, or any and all subsequent amendments and additions thereto.

SEC. 19. *Be it further enacted*, That it shall be the duty of the boards of police or boards of supervisors of the several counties through which said railroad may pass, and the corporate authorities of all incorporated towns and cities situated in such counties, on the written request of the president of the board of directors of said railroad, to submit *it* to the qualified voters thereof, the question as to whether the tax-payers and property holders of such counties, cities and towns shall be taxed upon all their taxable property, real and personal, to aid in the construction of said road, and the said Board of Supervisors and corporate authorities shall, in submitting said vote, designate or state the amount of said tax to be voted for; *provided, always*, that said amount shall not exceed one and one-half per centum upon the assessed value of the taxable property in said county, city or town, and the annual installments in which it shall be paid; and that two-thirds of the legally qualified voters of said counties, cities and towns in such election held be required, and the said Board of Supervisors and corporate authorities shall, upon request, submit to said counties, cities and towns the question as to whether they will loan their credit to said road, and the ——— thereof shall at the same time be designated by said boards of supervisors and corporate authorities; and if any county, city or town shall, by a two-thirds vote, decide to loan its credit to said railroad, the said Board of

Supervisors, or corporate authorities, shall issue bonds therefor, bearing not more than eight per centum per annum interest, which said bonds shall be signed by the President of the Board of Supervisors, or the mayor of said city or town, as the case may be, and the said county, city or town, to the amount of said loan, shall be entitled to like amount of stock in said road; and it shall be the duty of such Board of Supervisors and corporate authorities, immediately on receipt by them of said written request, to order such election to be held within sixty days from the day such request is so received by them respectively; and such elections shall be regulated by the laws then in force governing elections in such counties, cities and towns, and the returns thereof shall be made and certified in due form by the inspector of such elections, and deposited with the clerks of the chancery courts of their respective counties for record and public reference.

SEC. 21. *Be it further enacted*, that certificates of stock shall be issued on said railroad to said counties, cities and towns to the amount of tax paid by them respectively; and the President of the Board of Supervisors, under the direction of the supervisors, and the mayors of cities and towns under the direction of respective town councils, shall be entitled, in all elections held by said railroad company, to cast the vote for, and in all respects represent the stock of said counties, cities and towns, and all dividends which may be declared on the earnings of said road shall be paid to the treasurers of said counties, cities or towns, according to the respective amounts of their stock.

An act to amend the several acts aforesaid, (*27th January, 1872).

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the act of the said legislature, entitled "An act to incorporate the Grenada, Houston and Eastern Railroad Company," approved February 6, 1860, be, and the same is hereby so amended and so extended as to authorize the said Grenada, Houston and Eastern Railroad

Company, as now organized under the act aforesaid incorporating said railroad company, to construct an extension of said railroad from the town of Grenada, in Grenada County, Mississippi, to the city of Vicksburg, by the way of Yazoo City, or by such other route as the Board of Directors of said company may deem best for the company aforesaid. And the said railroad company is hereby authorized and empowered to survey, lay out, and construct an extension of the said Grenada, Houston and Eastern Railroad from the town of Grenada to the city of Vicksburg in the same way and manner, with like powers, rights and privileges, and under the same restrictions and liabilities as by the act incorporating said company, and by the several acts in aid of the construction of the Grenada, Houson and Eastern, the said company is authorized to lay out and construct said railroad from Grenada eastward to the Alabama line.

SEC. 2. *Be it further enacted*, That from and after the date hereof, the Grenada, Houston and Eastern Railroad Company shall be known and designated as the Vicksburg and Nashville Railroad Company, and by that name and style shall hereafter sue and be sued, plead and be impleaded in any court of this State; and all subscriptions of stock to, or bonds issued for the benefit of the Grenada, Houston and Eastern Railroad Company, are hereby made payable to and collectable by the Vicksburg and Nashville Railroad Company, and the title to all property of every description and kind whatsoever, whether real, personal or mixed, which by law heretofore vested in the Grenada, Houston and Eastern Railroad Company, is hereby invested in the Vicksburg and Nashville Railroad Company, to be collected, used, sold, transferred or enjoyed by said company as by law the Grenada, Houston and Eastern Railroad Company might have collected, used, sold, transferred or enjoyed the same; and all contracts and obligations heretofore entered into by the Grenada, Houston and Eastern Railroad Company, and all debts of whatsoever kind due by the said company, are hereby

made the debts, contracts and obligations of the Vicksburg and Nashville Railroad Company, which shall be liable therefor, as fully in every particular as the Grenada, Houston and Eastern Railroad Company might have been; and all certificates of stock in the Grenada, Houston and Eastern Railroad Company heretofore issued, shall entitle the holder to an equal number of shares in the Vicksburg and Nashville Railroad Company, and, when required, the secretary of the company shall take up the certificates of the Grenada, Houston and Eastern Railroad Company, and substitute those of the Vicksburg and Nashville, and the act of the Legislature of Mississippi incorporating the Grenada, Houston and Eastern Railroad Company, approved February 6, 1860, and the several acts of the legislature passed to aid in constructing said Grenada, Houston and Eastern Railroad are hereby made to apply to the Vicksburg and Nashville Railroad Company, and to the several counties and towns through or near which the said Vicksburg and Nashville Railroad shall pass, with all their force and effect, as the same are intended to apply to the counties of Grenada, Calhoun and Chickasaw.

SEC. 4. *Be it further enacted*, that inasmuch as the question of subscribing or no subscription for fifty thousand dollars to aid in the construction of a railroad from Vicksburg to Grenada, in this State, was, by the Board of Supervisors of Grenada County, submitted to the qualified voters of Grenada County, and the same was sustained by a majority of two-thirds of the qualified voters of said county at a general election held therein on the 7th day of November, 1871, it shall and may be lawful for the Board of Directors of the Vicksburg & Nashville Railroad Company, by resolution made and entered in the minutes of said board at a regular meeting thereof, sanctioned by a majority of said Board of Directors, to accept all the provisions of this act, and adopt, as a part and portion of the Vicksburg and Nashville Railroad, the extension specified in this act from Grenada to Vicksburg; and when, after such acceptance and adoption, the said so-called Vicksburg

and Grenada Railroad shall form and constitute a part and portion of the Vicksburg and Nashville Railroad, and shall be constructed, owned, and held by the Vicksburg and Nashville Railroad Company; and it shall be lawful for, and it is hereby made the duty of the Board of the Supervisors of Grenada County, through the President of said Board, upon the application of the President or other authorized agent of the Vicksburg & Nashville Railroad Company, to subscribe for fifty thousand dollars of the capital stock of the Vicksburg & Nashville Railroad Company, based upon the submission to and the approval of the vote of two-thirds of the qualified voters of said county, which is hereby ratified and confirmed to the Vicksburg & Nashville Railroad Company so heretofore had on behalf of the Vicksburg & Grenada Railroad as aforesaid, and bonds of said county *and bonds of said county* to secure the payment of said subscription for the stock and interest thereon, and also certificates of stock in said company shall be used as in other cases provided for in this act.

SEC. 5. *Be it further enacted*, That the said Vicksburg & Nashville Railroad Company be, and the same is hereby, authorized under the same restrictions and with the like privileges granted to the main line, to locate, construct, manage, control, maintain, equip, use, and operate a branch line of said railroad from some point on the main line running in an eastern direction to the Mississippi River to a point opposite to Eunice, in the State of Arkansas, or to such other point as the directors of said railroad company may select; and said company is further authorized to locate, construct, manage, control, maintain, use, and operate a branch line of said railroad from some suitable point on the main line in an eastern direction to the Alabama line, and such other branches as the said directors may deem proper in response to the wants of the country.

SEC. 7. *Be it further enacted*, That said company is hereby authorized and empowered to own and hold or charter, in whole or in part, one or more steamboats or

other crafts, for navigating the Mississippi, the Yazoo, or Tennessee Rivers, and their tributaries; and with such steamboats or other water crafts, they may transfer persons and property upon the said rivers and their tributaries within or without the limits of this State, upon such terms as the Board of Directors may deem proper, not inconsistent with the laws of this State, or of the United States.

SEC. 10. *Be it further enacted*, That all acts or parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed.

Approved 27th January, 1872.

MISSISSIPPI CONSTITUTION OF 1869.

ARTICLE I.

SECTION 18. No property or educational qualification shall ever be required for any person to become an elector.

ARTICLE VII.

SECTION 1. All elections by the people shall be by ballot.

SEC. 2. All male inhabitants of this State, except idiots and insane persons, and Indians not taxed, citizens of the United States, or naturalized, twenty-one years old and upwards, who have resided in this State six months, and in the county one month next preceding the day of election, at which said inhabitant offers to vote, and who are duly registered according to the requirements of Section three of this Article, and who are not disqualified by reason of any crime, are declared to be qualified electors.

SEC. 3. The legislature shall provide by law for the registration of all persons entitled to vote at any election, and all persons entitled to register, shall take and subscribe to the following oath or affirmation:

"I———, do solemnly swear (or affirm), in the presence of Almighty God, that I am twenty-one years old, that I have resided in this State six months, and in——— county one month, that I will faithfully support and obey the con-

stitution and laws of the United States, and of the State of Mississippi, and will bear true faith and allegiance to the same, so help me God."

SEC. 4. No person shall be eligible to any office of profit or trust, or to any office in the militia of this State who is not a qualified elector.

(Section 5 expunged.)

SEC. 6. In time of war, insurrection or rebellion, the right to vote at such place, and in such manner as shall be prescribed by law, shall be enjoyed by all persons otherwise entitled thereto, and who may be in the actual military or naval service of the United States, or this State, *provided*, said votes be made to apply in the county or precinct wherein they reside.

ARTICLE IV.

SECTION 2. The House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

SEC. 4. The Senate shall consist of members to be chosen every four years, by the qualified electors of the several districts.

ARTICLE V.

SECTION 12. All commissions shall be in the name and by the authority of the State of Mississippi, be sealed with the great seal of State, and signed by the Governor, and be attested by the Secretary of State.

SEC. 19. The Secretary of State shall be elected by the qualified electors of the State; shall be at least twenty-five years of age, and a citizen of the State one year next preceding the day of his election, and shall continue in office during the term of four years; he shall keep a correct register of all the official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the legislature, and shall perform such other duties as may be required of him by law.

SEC. 20. A State Treasurer and Auditor of public accounts shall be elected by the qualified electors of the State, who shall hold their offices for the term of four years, unless sooner removed, and shall possess the same qualifications as the secretary of State; and together with the last named officer, shall receive such compensation as may be provided by law.

SEC. 21. A sheriff, coroner, treasurer, assessor, and surveyor, shall be elected in each county by the qualified electors thereof, who shall hold their offices for two years. unless sooner removed.

ARTICLE VI.

SEC. 19. The clerk of the Supreme Court shall be appointed by said Court, for the term of four years, and the clerk of the Circuit Court and the clerk of the Chancery Court, shall be elected by the qualified voters of their several counties, and shall hold their offices for the term of four years; and the legislature shall provide by law, what duties shall be performed by the clerks of the Circuit and Chancery Courts, during vacation, subject to the approval of the Court.

SEC. 20. The qualified electors of each county shall elect five persons, by districts, for the term of two years, who shall constitute a board of supervisors for each county, a majority of whom may transact business, which body shall have full jurisdiction over roads, ferries and bridges, and shall order all county elections, to fill vacancies that may arise in the offices of their respective counties, and perform such other duties as shall be provided by law. The clerk of the Chancery Court of each county shall be the clerk of such board of supervisors.

SEC. 23. A competent number of justices of the peace and constables shall be chosen in each county by the qualified electors thereof, by districts, who shall hold their office for the term of two years. The jurisdiction of justices of the peace shall be limited to causes in which the principal of the amount in controversy shall not exceed

the sum of one hundred and fifty dollars. In all causes tried by a justice of the peace, the right of appeal shall be secured, under such rules and regulations as shall be prescribed by law.

SEC. 25. There shall be an attorney general, elected by the qualified electors of the State, and a competent number of district attorneys, shall be elected by the qualified electors of the respective districts, whose term of service shall be four years, and whose duties and compensation shall be prescribed by law.

REVISED CODE OF 1871.

SECTION 377. When the counting shall have been completed, with careful and accurate additions and examination to determine and certify that the result thereof is correct, signed by said inspectors and registrars and clerks, the inspectors shall select one of their number to return the result with the ballots, poll-book and ballot-box, and the sheets of paper upon which the result was tallied and computed, to the board of registration, at the court-house or county seat, on Thursday, or the second day after the election, by twelve o'clock, noon, when the board of registration, with their clerks, shall assemble to examine and determine the result of the election in the county, by transcribing and computing the returns from the several precints or districts therein; and upon ascertaining, by careful examination and calculation of the proceedings and returns the result, it appearing that any candidate for any office from the county, or from any district therein, has a plurality or largest number of votes therein, they shall proceed to make out a certificate for him therefor, designating thereon the number of votes polled for that office, and for each candidate, and the plurality of the successful candidate, and that he is thereby elected to that office, and immediately forward a true copy of all such returns certified to as to each office, to be correct and complete by the board of registration, or a majority thereof, to the secretary of State, by mail, postage paid. Whenever any two

or more candidates for any county or district office therein shall have an equal and the highest number of votes, the result shall be determined by lot, by the board of registration, and a certificate thereof made accordingly. A commission shall be accordingly issued; but the officer elect may immediately proceed to qualify and enter upon his duties without any delay for such commission; and his term of office will date from such qualification.

SEC. 379. In all cases of district elections, where any two or more candidates shall have an equal and the highest number of votes, the result shall be determined by lot by the secretary of State, in the presence and under the inspection of the governor and attorney general, and if one or both of them shall be absent, then the auditor or treasurer of State, in place of such absent officer or officers, in such manner as they shall deem most accurate and unobjectionable.

SEC. 386. After the returns and the result shall have been published, the Speaker shall cause notice thereof to be given to the officer elected. When any two or more candidates for any State office shall have an equal, and the highest number of votes, the two houses shall forthwith, or by adjournment, from day to day, proceed to elect by a majority of the ballots cast for these candidates, the person to fill the designated office. In all cases the Speaker of the house shall cause notice to be given to the officers of their election, and that the two houses will be ready, at a specified time, to install, and have qualified, the Governor and other State officers.

ASSIGNMENT OF ERRORS.

1.—The Court erred in instructing the jury that section 1 of the Act of 25th March, 1871, conferred authority upon the Board of Supervisors to subscribe capital stock in aid of the Grenada, Houston & Eastern Railroad; and that the 4th section of said act authorized the issuance of these bonds sued on, and all of them under the circumstances under which they were issued.

2.—The Court erred in instructing the jury that the agreed state of facts did not constitute a valid defense; inasmuch as said agreed state of facts showed that the bonds were issued, and the subscription on which their issuance was based was made, after such authority as may have been conferred by the vote, if any, was revoked; of which facts defendants in error are chargeable with notice, by the recitals of the statutes and of the bonds.

3.—The Court erred in instructing the jury that the agreed state of facts did not constitute a valid defense; inasmuch as said agreed state of facts showed that the bonds were issued after so fundamental an alteration of the charter, and so wide a departure from the contract, that the county was released from its subscription, if any subscription had been lawfully made; of which facts, defendants in error are chargeable with notice by the statutes and by recitals of the bonds.

H. P. Brantham
Atty. for Plffs in error.

ARGUMENT FOR PLAINTIFF IN ERROR.

The bonds and coupons sued on in this action, must be divided into two distinct classes. Class A, will embrace those numbered from 1 to 150, and from 251 to 300, inclusive; and are the bonds issued in payment of the subscription voted to the Grenada, Houston & Eastern R. R. Co. Class B will embrace those numbered from 151 to 250, inclusive; and are the bonds issued in payment of the subscription voted to the Vicksburg & Grenada Railroad.

My first line of argument is intended to apply to both classes A and B; and if satisfactory to the Court, will dispose of both at once. My second line of argument is applicable to class B alone.

AS TO BOTH CLASSES, A AND B.

Plaintiff in error claims that all the bonds and coupons sued on in this action are void, even in the hands of defendants in error, because they were issued without authority:

1.—They were issued in the absence of any constitutional act of the legislature authorizing their issuance.

2.—They were issued, and the subscription on which their issuance was based was made, after such authority as may have been conferred by the vote, if any, was revoked.

3.—They were issued, after so fundamental an alteration of the charter, and so wide a departure from the contract, that the county was released from its subscription, if any subscription had been lawfully made. And of notice of these facts, the defendants in error are chargeable by the statutory recitals and by the recitals of the bonds.

1. They were issued in the absence of any constitutional act of the legislature authorizing their issuance.

There was no act of the legislature conferring authority to subscribe to the capital stock of the Vicksburg & Nash-

ville R. R. Co. Such authority is sought to be traced through the Acts of February 10th, 1860, March 25th, 1871, and January 29th, 1872.

FIRST, as to the Act of February 10th, 1860, the county of Grenada is not named therein, nor are there any words of general import used, which could include any county not therein expressly mentioned. Moreover, the county of Grenada was not organized until 1870, when it was carved out of the counties of Yalobusha, Tallalatchie, Carroll and Choctaw. Of this, the court will take official notice; and see *Acts of* 1870, Ch. 53, p. 124. It was conceded below, and we presume will be here, that this act, *ex proprio vigore*, did not confer the power.

SECONDLY, as to the act of March 25th, 1871. On the 1st day of December, 1869, a new constitution was adopted in Mississippi which went immediately into effect.* Section 14, Article 12, of that instrument, provides that "The legislature shall not authorize any county, city, or town, to become a stockholder in, or to lend its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city or town, at a special election, or regular election, to be held therein, shall assent thereto."

This court has already decided that the effect of this section was not to repeal the act of February 10th, 1860; and further, that it did not prohibit the issuance of bonds under section 4 of the act under consideration, to meet and pay off a subscription made *before* the 1st December, 1869.† Its effect on the first section of this act is the point now to be considered.

As to the county of Grenada, that section is the act of original authority to subscribe: and it was passed more than a year after the new constitution went into effect. It so refers to and adopts the act of February 10th, 1860, that said act must be read as if transcribed in it, *ipsissimis*

* The State v. Williams, 49 Miss., 640.
† Supervisors v. Galbraith, 99 U. S., 214.

verbis, "in all its provisions;" and one of the very most striking of those provisions is, that the subscription shall be made "if at said election a *majority* of the qualified electors *voting* shall be in favor of such subscription." It was conceded in the court below, and we presume will be here, that section 1 of this act would be, for the foregoing reason, unconstitutional, if it were not for the last sentence of the section; and it was claimed that the reference in that sentence to the constitution saved the whole. This seems to us not a sound proposition.

It is clear that the legislature, by the words "And all such elections when held, shall be conducted in all things," &c., intended merely that the machinery of the election was to be so conducted, and did not intend to advert to the question of the majority to be arrived at. The *result* is one thing; the process of ascertaining that result is quite another. A close analysis of the sentence itself will show that.

The word "election" has two meanings. Its primary signification is *choice, selection;* its secondary or derivative signification is, that machinery appointed by law or custom for the ascertainment of the choice, selection or election of a given body of persons. This secondary meaning is obviously the one intended by the legislature here; and moreover, is the one in usual and common use. That this is true, will be shown by the fact that in every instance where the election in adverted to, the word "election" is used to express the machinery, the process of taking; and the result, or the primary signification of the word, is expressed by other language. Section 1 of the act of Feb. 10th, 1860, reads thus: "and if at said *election* a majority of the qualified electors voting shall be in favor of (i. e., shall *elect* to make) such subscription," etc. Section 14, art. 12, of the constitution reads thus: "at a special *election*, a regular *election*, to be held therein, shall assent thereto" (i. e., shall *elect* so to do). In a preceding portion of the very section under consideration, we read, "to cause an *election* to be held * * *, to take the sense (i. e., the

election of the legal voters,") &c. In brief, through all these provisions *in pari materia* we find running a clear legislative discrimination between the election on the one hand, and the sense, assent, or result on the other. Further, the majority, whether a bare majority, or a plurality, or a two-thirds vote, or an unanimous vote, is the *result* of an election; it is the end to be reached and ascertained by an election. How, then, can it be said to be *conducted?* To "conduct" is "to lead as a commander, to direct, to control." * Can a majority be said to be led as by a commander, to be directed, to be controlled? Again: "such elections when held," says the statute; can a majority be said to be held? or if election means the choice, selection, or the electors' act of choosing, can that be said to be held? Not by any reasonable use of language.

Suppose a vote on such a question as this to be taken by the authorized officers of a municipality, and by a show of hands. Would the fact that a clear majority of affirmative votes could be counted, constitute the election a good one? Of course not; the machinery prescribed by the constitution, the ballot, is not used, and there is no election, although there is clearly enough an ascertainment of "the sense" of the voters. Suppose, again, an election for sheriff, in all respects regular, were held, and each candidate received one thousand votes; there would be no result, no choice; and yet, would not there have been an "election conducted," an "election held?" If one, in such case, were indicted because he drove voters from the polls at the pistol's mouth, could he successfully defend on the ground that there was no election, because there was no result? Can it be said that no presidential election was held in 1800, and again none in 1824, because in those years none of the candidates received the requisite majority? In the case of *The State vs. Tucker, 54 Ala., 205*, it is held that the word, as used in an Alabama statute, means the act of casting and receiving the ballots, the day and time of voting.

* Webster's Unabridged Dictionary.

The very expression used, then, excludes the idea that the question of majority was within its legislative intent. But more than that: the whole context does so also. The sentence is, "And all such elections when held shall be conducted *in all things* as required (first) in the Act of which this is amendatory, and (secondly) of the constitution and (thirdly) laws of this state in force at the time so held." Here, "the act of which this is amendatory" (that is, the act of Feb. 10th, 1860) is first mentioned and most prominently insisted on; the mention of the constitution and laws is given the second place, and given it in a manner so careless and indifferent that the word "by" must be substituted for the word "of" in order to attach any significance to it. Moreover, it is emphatically declared that the elections shall be conducted *in all things* as required by "the act of which this is amendatory." If the legislature considered the majority a part of the election, and intended to change from the majority rule to the two-thirds rule, how could it declare that the election should be conducted *in all things* as required by the act of 1860? It would have been a senseless provision. It is obvious that the question of the majority to be cast at such elections was not before the legislative mind. Had it been, that body could not have failed to note the conflict between the act of Feb. 10, 1860, and the constitution on that point; and certainly would not have so stultified itself as to declare *uno flatu* that the elections should in all things conform at once to that act and this constitution. Taking, however, the expressions used as referring merely to the machinery of an election (which, we repeat, is the ordinary and popular meaning of the word), the provision is sensible and reasonable; because there is, on those points, no discrepancy whatever between the act of 1860 and the constitution.

Furthermore, the provision that "such elections when held shall be conducted *in all things* as required * * * of (by) the constitution and laws in force," &c., if the majority is part of the "conduct," adopts at once both the two-third rule of the constitution and the plurality rule of sec.

377, code 1871—another irreconcilable inconsistency, even if it could otherwise be argued that this sentence was intended as an amendment of the majority rule of the act of 1860.

This view is sustained by a further examination of the section. The first sentence is, "That the act * * * approved Feb. 10, 1860, shall apply *in all its provisions* to Grenada county * * * as the said act is intended to apply to the counties therein named," &c. Could language be more sweeping or more emphatic? Yet counsel for defendant in error maintained that in the very utterance of that sentence the legislature had in view the wide difference between a majority vote and a two-thirds vote, and intended to change from the one to the other. Surely that is impossible. Note, moreover, the use of the present tense: "as the said act *is* intended to apply," &c., (not *was* intended to apply) showing clearly the legislative understanding that the said act of Feb. 10, 1860, *is* still in force *in all* its provisions, notwithstanding the 14th sec. of art. 12, adopted now sixteen months since; and, with equal clearness, the intent that it shall apply to Grenada county in all its provisions, *as* (that is, in the same manner) it *is* intended to apply to the counties named. There is not anywhere the slightest recognition of any the least change necessary in extending said act to Grenada, or any the least difference to be made between Grenada and the counties named in the act.

Further, sec. 1 makes it the duty of the board to cause an election to be held "to take the sense of the legal voters," &c., "and to do *all other* acts and things which the said *Act of which this act is amendatory* authorizes or requires of the board," &c. Here the election adverted to is expressly designated as the election provided for in the act of 1860; that, and none other; no advancement of the constitution or the general body of the laws in this clause, or error in the sentence.

We must advert, in support of these views, to the fact that the constitution does contain several provisions rela-

tive to elections, as regards their machinery. See *Art 1, sec. 18*, and all of *Art. 7;* so does the act of 1860, sec. 1: and so, of course, did the general body of the statutes adverted to as "the laws in force," &c.

There is a remarkable feature about this act of 1871. Sec. 2 extends the power of subscription to towns along the line of the railroad, with a proviso that all such subscriptions "shall have been sustained by a constitutional majority of two-thirds of the votes polled at an election regularly held," &c. This section and sections 3 and 5 (which are based on it) are full of significance. There is a clear intention on the part of the legislature to distinguish the case of the towns from that of the counties: and why distinguish them unless the legislature regarded the situations as different? It would have been easy to make one provision, or section, to cover the whole, as was done in section 3 of the act of Jan. 29th, 1872. The theory of Defendant in Error is that in framing section 1, the legislature had in view the constitutional requirement as to a two-thirds vote; then why so studious an avoidance to expressly announce that idea in the very section into which they were incorporating the majority provision of the act of Feb. 10, 1860; and yet, so studious an announcement of it in section 2? It is evident that the scheme was, that the counties and the towns should not be in the same category; that the legislature considered, that inasmuch as the act of 1860 was not abrogated by the constitution, it could extend the provisions of that act to all bodies similar to those therein provided for (i. e., counties along the line of the railroad), and thus avoid the necessity for a two-thirds vote; while no towns being mentioned in that act, a different course was necessary as to them. And it had no idea that the last sentence of sec. 1 would be construed as having any reference to the question of majority.

Section 2 is itself unconstitutional*; and was so declared by Judge Hill, in a case of *Woodruff v. Okolona MSS Opinion*, in the Northern district of Mississippi.

*Hawkins v. Carroll Co., 50 Miss., 735.

Further, the same legislature which passed this act of 1871, enacted also the Revised Code of 1871; and a brief examination of the provisions of this code in reference to its election features, will show conclusively that in the opinion and intent of that legislature the majority to be reached as to the result of any election was no part of the holding of the election. The Constitution of 1869 was in force. Sections 19 and 20, article V and section 25, article VI thereof, provided that a Secretary of State, a Treasurer, an Auditor of Public Accounts and an Attorney General should be "elected by the qualified electors of the state"; section 4, article 4, and section 25, article VI provided that the state senators, and district attorneys should be "elected by the qualified electors of the several districts"; section 2, article IV, section 21, article V, and section 19, article VI, provide that state representatives, sheriffs, coroners, treasurers, assessors, surveyors, and clerks of the circuit and the chancery courts shall be "elected by the qualified electors of the county"; and sections 20 and 23, article VI provides that supervisors, constables and justices of the peace shall be elected by the qualified electors of the counties, by districts. Yet this same legislature, in framing the code of 1871, enacted that "whenever any two or more candidates for any county or district office therein shall have an equal and the highest number of votes, the result shall be determined by lot by the board of registration, and a certificate thereof made acccordingly. A commission shall be accordingly issued"; &c.* "In all cases of district elections, where any two or more candidates shall have an equal and the highest number of votes, the result shall be declared by lot, by the secretary of state, in the presence of" &c.† "When any two or more candidates for any state office shall have an equal, and the highest number of votes, the two houses (*of the legislature*) shall forthwith, and by adjournment, from day to day, proceed to elect, by a majority of the ballots cast, from those candidates, the person to fill the designated office."‡

*Code 1871, § 377. †Code 1871, § 379. ‡Code 1871, § 386.

Clearly, in the opinion of the legislature of 1871, the reaching of any majority, much less a specific one, was not necessary in order to fulfill a requirement that an election be "held as required by the constitution."

But even if Section 1 of the act of 1871 is constitutional, it does not follow that there was any authority to issue these bonds.* Such authority as there was, is drawn from section 4 alone. But if sec. 1 is constitutional, then sec. 4 is *un*constitutional; and although the subscription should be valid, yet would the bonds be void. If sec. 1 is constitutional, it is so because it requires the vote polled under it to be a two-thirds vote; and if that is its requirement, then to the extent that the act of Feb. 10, 1860, authorizes a subscription to be made on a majority vote, the two are inconsistent, and the act of 1860 is repealed.† And yet, sec. 4 expressly declares that "it shall and may be lawful for the boards of supervisors of *any* county which shall have voted a tax "(not subscribed capital stock)" as provided by this act *or the act to which this act is amendatory* (i. e., the act of Feb. 10, 1860) to "issue bonds * * * to meet, pay off, and discharge the subscriptions of said counties, respectively, for capital stock * * * which have been, *or which may hereafter be subscribed for by the said board of supervisors.*" &c.

Now, it is well settled that if the act conferring authority is repealed before subscription is consummated, the power to subscribe is lost, even although a favorable vote may have been taken.‡ Here, then, would stand a section which authorizes bonds to issue, to pay off a subscription, either already made or afterwards to be made, based on a vote taken under an act and under a rule as to the majority requisite, which have been, the one annulled by the constitution, and the other repealed by sec. 1 of this very act—and where the power to subscribe has been itself

* Wells v. Supervisors, MS Opinion, Oct. Term, 1880.

† Sec. 11, Act of March 25th, 1871.

‡ Marsh v. Fulton Co., 10 Wall., 676; Concord v. Bank, 92 U. S., 625; Bates v. Winters, 97 U. S., 83; Covington &c., R. R. Co. v. Kenton Co. Ct., 12 B. Monroe; 144.

therefore lost. Such an enactment would be violative of the constitutional provision, and void.

The legislature intended nothing of that kind. It did not consider that it was changing the rule of the act of 1860 as to the majority: but intended to leave it as it was. It is true, sec. 1 is thereby made unconstitutional; but sec. 1 and sec. 4 cannot both stand; and whether the one or the other fall, it is fatal to the case of the defendant in error.

THIRDLY, as to the act of January 27th, 1872, sec. 3, of which is also relied on us a possible source of authority, inasmuch as the bonds bear date May 1st, 1872. The answer to that claim is obvious and conclusive.

The admission by defendant in error, of record in the case, is that the bonds were *not* issued under authority of that act, on the contrary, that the vote was taken and the order to subscribe made, two or three months before the act was passed. The holder could not presume that they were issued thereunder, because the bonds set forth the authority, *and set it forth correctly.* They recite that they were issued under and by virtue of the acts of February 10, 1860, and March 25, 1871, and a vote of the people taken thereunder. There is no allusion whatever to the act of January 27, 1872; and *expressio unius exclusio alterius est.* If it were true that the bonds were issued under the act of 1872, the failure to recite that fact would not invalidate the bonds; if the bonds contained false recitals of facts, the purchaser would be protected by them; but the case has yet to be decided in which the truthful recitals of a bond will be set aside, and an untruth assumed, in order to vest a plaintiff with the character of a bona-fide purchaser.

The general act of April 19, 1872, chapter 102, is also relied on for the same purpose. The same answer applies here; and the further answer is that that act does not authorize any bonds to issue in any event, except seven per cent. bonds; whereas, those sued on are eight per cent. bonds, and if issued under that act would be void.*

* Woodruff v. Okalona, 57 Miss., 896.

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* Woodruff v. Okalona, 57 Miss., 896.

2. *They were issued, and the subscription on which their issuance was based was made, after such authority, if any, as may have been conferred by the vote, was revoked.*

3. *They were issued after so fundamental an alteration of the charter, and so wide a departure from the contract, that the county was released from its subscription, if any subscription had been lawfully made.*

And of these facts, Defendants in Error are chargeable with notice.

The facts with which the two foregoing positions deal are very intimately blended; and the propositions are themselves advanced as alternative propositions. It will therefore be simpler and easier to consider this whole field at once.

The people of Grenada County, in their vote of 1871, authorized two contracts to be made; one, a contract to subscribe $50,000 to the capital stock of a projected road, having its termini in Vicksburg and Grenada, and a capital stock of five millions; the other, a contract to subscribe $50,000 to the capital stock of the G. H. & E. R. R., then chartered, with its termini at Grenada and the Alabama State line (*en route* to Nashville), and a capital stock of six millions. The consummation of that scheme would have given the county the advantage of four competing lines of railroad; one, already built, to New Orleans; one, already built, to Memphis; one to the Mobile & Ohio R R., and thus to Mobile, and one to Vicksburg and the Mississippi; and of these four roads, three would have their termini in Grenada.

Such was the scheme voted for, and such was the scheme which the Board of Supervisors authorized, when they instructed their president to make the two subscriptions. The alteration of the charter of the G. H. & E. R. R. Co., effected by the act of January 27, 1872, and the consolidation of that company with the Vicksburg, Yazoo Valley & Grenada Company, effectually defeated that scheme. The two competing lines were reduced to one, and the town of

Grenada, instead of being the terminus of the two, was reduced to a mere way station on the one.

But more than that. The two railroads (one as chartered and the other as contemplated) were *railroads;* as the act of 1872 altered the status, they were left a packet company with a railroad attached. The concerns were converted into a ridiculously wild and chimerical scheme. Authority was given to set up lines of boats to navigate the ***Mississippi River and its tributaries.*** The Red, the Arkansas, the Missouri and the Platte Rivers, were thrown open to its keels; the Wisconsin, the Illinois. the Ohio, the Kentucky, the Cumberland, the Tennessee, the Wabash, the Kanawha and the Alleghaney, etc. Where was the thing to stop?

Nor was even that all. The two railroads (the one as contemplated, the other as chartered), would have an aggregated stock total of $11,000,000 with which to build, equip, and operate the two lines, of about two hundred miles; but the new concern, with all its packet lines and branch railroad lines, was still restricted to its six millions of stock.

It would be difficult to imagine a contract and charter more radically altered.

Now the subscriptions were *voted* to the two railroads severally, and so were they *ordered* by the board to be made, by their order of December 4, 1871. The order reads thus: "It is therefore judged and ordered by this Board of Supervisors that the president thereof subscribe for Fifty Thousand Dollars each of the capital stock, etc." This was not an executed subscription, but the subscription was to be made in the future by the president.* He seems not to have made the subscription until after the V. & N. R. R. Co. was created, for the bonds recite on their face that the subscription was made to that company, not to the G. H. & E. R. R.; and further, the minutes of the G. H. & E. R. R. show a resolution substantially accepting

* County of Bates v. Winters, 97 U. S., 83.

the subscription, made after the resolution accepting the amendment of the charter; but on the same day,* and section 4 of the act of 1872, directs the Board of Supervisors, *thereafter*, to subscribe, as to $50,000 of the stock in question, and that act was passed on January 27, 1872. He had no power to make such subscription under the order of December 4, 1871, inasmuch as so radical a change had supervened. The case in this aspect is fully within the principal of *Harshman v. Bates County*, 92 U. S. 569, and *Bates County v. Winters*, 97 U. S., 83, even as they are explained and distinguished by *Wilson v. Salamanca.*

Even if the subscription had been previously consummated, so radical an alteration of the charter and contract would release the county: *Hartford & N. H. R. R. Co. v. Croswell*, 5 Hill, 383; *Marietta & C. R. R. Co. v. Elliott*, 10 Ohio St., 57; *Hester v. M. & C. R. R. Co.*. 32 Miss., 378; *Stevens v. Rutland B. R. R. Co.*, 29 Vt., 545; *Manheim P. & G. Turnp. Co. v. Arndt*, 31 Pa. St., 317; *Winter v. Muscogee R. R. Co.*, 11 Ga., 438; *Clearwater v. Meredith*, 1 Wall., 40.

If, then, the subscription was made without authority by the president, or if it was made before the alteration of the charter, and such alteration operated to release, in either event the bonds were issued without consideration, and *ultra vires* of the officers who put them out, and are voidable.

This would not be the case if the purchaser was not chargeable with notice, but we claim that the recitals of the bonds are such that there can be no *bona fide* holding of them. They are executed to the *Vicksburg & Nashville Railroad Company* in payment of a subscription to *that* company. The purchaser must see the authority. He must examine the act of February 10, 1860, the act of March 25, 1871, and the act of January 27, 1872. He can not keep out of the act of January 27. True, it is not named on the face of the bond, but when he turns to the

* Printed record, page 25.

acts there named, he finds in them no mention of that company, and the connection between those acts and these bonds can only be made through that act of 1872. And when he looks into that act at all, the character of this whole transaction is revealed. The *bonds* tell him, and tell him truly, so far as $50,000 of the bonds is concerned, that the vote of the people, which is the fountain of authority, was taken under the acts of 1860 and 1871, for a subscription to the G. H. & E. R. R. Co, as constituted under *those* acts; they also tell him that the subscription was made, not to the G. H. & E. R. R. Co., but to the V. & N. R. R. Co. The act of 1872 tells him that the latter company is one whose purposes and constitution are so different from the old as to be practically a different corporation, and moreover, a most suspiciously bubble-like concern. The constitution of the State tells him that not only can not a county subscribe in aid of a railroad without a vote of the people to aid *that* railroad, but even that the legislature can not authorize it to be done; and that the company voted for, and the company subscribed to, must be the same.

Nor is this all. Section 4 of this same act of 27th January, 1872, which he *must* read, notifies him of the fact that the people of Grenada County voted to subscribe the other $50,000 in aid of "the Vicksburg & Grenada Railroad;" not only a non-existent corporation or railroad, but non-existent also in a State where there was no general statute authorizing counties to subscribe in aid of railroads generally.* Then it proceeds to appropriate that vote and subscription to the V. & N. R. R. Co., without any reference of that question to the people, and in plain violation of the constitutional requirement, and directs peremptorily that bonds shall issue to secure the same *to that company*. This section 4 was surely sufficient to put the purchaser on inquiry as to whether or not the bonds he was buying were not of that class, and as to the wide difference in all respects between the vote of November 7, 1871, and the

* In which respect this case is vastly different from the *County of Davis* v. *Huidekoper*, 98 U. S., 98; as I will show more fully later.

action ultimately taken by the Board. As before stated, the other provisions of the act of 1872, without this section 4, gave him notice as to one $50,000 of the change in the contract and charter; and section 4 is notice as to the second $50,000 of the want of any vote whatever to subscribe to this company.

It will not do to say, in answer to the foregoing propositions, that the acceptance by the board of the stock certificates, the issuance by it of the bonds, and the collection and disbursement of an interest-tax for two years, constituted a ratification of the illegal subscription and estop the county in this case: and for three reasons:

1. The Board of Supervisors, in Mississippi, is a body of the most strictly limited powers. Whilst in one sense they are the agents of the people of the county as to their financial affairs, yet their agency is special. In no sense are they "the county in its corporate capacity," as this court say was the status of the township officers who acted in *Wilson* v. *Salamanca*, 99 U. S., and of the County Court in *County of Scotland* v. *Thomas*, 94 U. S. This specially limited capacity of the board has been recognized by this court in the cases of *Bell* v. *The Railroad*, 4 Wall., 598, and *Wells* v. *Supervisors*, 102 U. S., 625. It has been insisted on and enforced in Mississippi in many cases: in *Bridges & Hill* v. *Supervisors*, 58 Miss., 817, in which the court repudiated an alleged estoppel growing out of the conduct of the board, saying, "Certainly no such principle can be invoked against the county. Boards of supervisors bind the counties only when acting *within the range of their authority* and in the mode and manner pointed out by the statutes." In *Supervisors* v. *Arrighi*, 54 Miss., 668, the court saying, "It is well settled that contracts made by the officers of municipal or quasi-municipal corporations in violation of law impose no liability upon the body politic, *and that no subsequent ratification by such officers of the void contract can impart to it validity.*" In *Beck* v. *Allen*, 58 Miss., 143, the court saying, after quoting from the Arrighi case, "The county boards, *even as to the matters con-*

fided to them by the Constitution, must act in accordance with law;" and to the same effect generally are *Beaman* v. *Leake Co.*, 42 Miss., 247; *Howe* v. *The State*, 53 Miss., 70, and others.*

2. If these bonds were issued and the subscription was made, after the authority so to do had been revoked by the change in the contract and charter, and if the statutes and recitals of the bonds were such as to charge the purchaser with notice, as I have argued; then, the case of *Supervisors* v. *Paxton*, 57 Miss., 701, is conclusive on this point. As the Mississippi Supreme Court say, the acts claimed to constitute an estoppel "can only be regarded as additional usurpations by the Board of Supervisors, and additional wrongs to the tax-payers of the county." The idea that the issuance of the bonds should estop the people of the county, under the circumstances, is also inconsistent with the decisions of this court in the cases of *Harshman* v. *Bates Co.*, and *Bates Co.* v. *Winters*, in which cases the bonds sued on were the bonds of the county, and were issued by the county officials, and yet no estoppel was applied. Not much citation of the authority is needed to the point that an estoppel can not be set up by a purchaser with notice, whether that notice be actual or constructive. *Marsh* v. *Fulton County*, 10 Wall., 676, is sufficient. The company, by its officers were aware of the board's excess of authority and the release of the county in fact, because those officers were aware of their own conduct and dealings; and the defendants in error, as I have just shown, had constructive, if not actual, knowledge.

3. It is essential to an estoppel that it should be acted upon; that is to say, the conduct which is alleged to have produced an estoppel, must actually have been the inducing cause for the action of the party who seeks to set it

*In order that the weight of these decisions may be felt, it is necessary to hold in view the fact that they were rendered in cases in which the subject-matter of the controversy was within the constitutional powers of the board; and *a fortiori* do the principles enunciated in them apply where the subject-matter of the board's action was entirely without those powers.

up.* Now there is not one word of proof in the record that defendants in error, at the time they obtained these bonds knew of the payment of interest, or that they took them because of such payment, or would not have taken them if such payment had not been made, or of anything of that kind. Will the court assume such to be the facts?

It seems to me that estoppel can cut no figure in this case.

Ray v. Vansycle, 96 U. S., 675, and its cognate cases, are no precedents here. In them, counties and municipalities which have acted by its accredited officers and have reaped the benefits of completed railroads, have been held estopped from refusing to pay on technical grounds. Have been so held, because to allow them so to refuse would be to countenance a fraud. Here the facts are essentially different. The transaction out of which these bonds grew occurred at a period when despair brooded like an incubus over the people of Mississippi. The conduct of public affairs, (state, county and municipal), was such as even the zeal of partisan politics has found it hard to forget and impossible to justify. The tax-voters were arrayed in sharply defined lines against the tax-payers; and every office, from the lowest constableship to the gubernatorial chair, from the pettiest magistracy to the supreme bench, was in the hands of the few whites who wielded the colored votes, and so arrayed them. These are matters of public history. The population of Grenada County was, by the census of 1870, 3,929 whites and 6,642 blacks; and under these circumstances an indebtedness of $100,000, to run for a series of years at 8 per cent. interest, was voted, when the entire value of all the real and personal estate of the county was $1,926,226. The vote, when cast, was manipulated, as I have hereinbefore described, and the county is now pursued on an alleged debt, so created, to aid a railroad which, not only has never been built, but which has had no meeting of either stockholders or directors since

* State v. Laies, 52 Mo., 396; Van Deusen v. Sweet, 51 N. Y., 378.

July 6th, 1875, and which was sold out to an individual purchaser in 1878 for the paltry sum of $821.51.

"Like the dew on the mountain,
Like the foam on the river,
Like the bubble on the fountain,
It is gone, and forever."

AS TO CLASS B, OF SAID BONDS.

Plaintiff in error claims that they are void, even in the hands of defendants in error, because

1. Even if the Act of March 25th, 1871, were constitutional, still this Class B were issued in the absence of any constitutional act of the legislature authorizing either their issuance or the subscription.

2. Supposing the foregoing position to be untenable, then the vote was made in favor of, and the right to the subscription belonged to, a different company from either the G. H. & E. R. R. Co., or the V. & N. R. R. Co., of which defendants in error had notice.

3. And even if both the preceding positions are incorrect, still there were conditions precedent, not fulfilled, and of which defendants in error had notice.

In support of the first proposition: the act of February 10, 1860, as we have seen, does not authorize Grenada County to subscribe to any railroad; and the act of 1871, March 25, only authorizes it to subscribe to the G. H. & E. R. R. Co. We have also seen that the vote as taken, and the order of the Board made, were for a subscription to the "Vicksburg and Grenada Railroad," at that time contemplated, but not organized or chartered.

That vote and order were simply nullities. It is unnecessary to array authorities to the point that there must be an express legislative grant of such power. And although in *County of Daviess* v. *Huidekoper*, 98 U. S., 98, this court held that the fact that the vote preceded the organization of the company did not invalidate the bonds; yet the case is expressly put upon the ground that "a perfection of the

corporation before the subscription is made and the bonds issued is a compliance with the statute," and that "there is a broad difference between the cases where the subscription is actually made and the bonds are issued in fact, after the corporation is complete, and where these things are done while the corporation remains incomplete." This case clearly recognizes the law to be otherwise if the subscription and vote precede the organization of the company: and if that be true in a state where, as there was in Missouri, a general statute authorized the county court of any county to subscribe, &c., *a fortiori*, is it true in a state, as in Mississippi, where there was no such authority; and where, consequently, there was neither a law to authorize the obligation, nor an obligee *in esse* to receive it.*

Being void, Sec. 4 of the act of January 27th, 1872, did not validate it. That section is unconstitutional for two reasons:

(A). Regarded as an act of ratification, it is in conflict with Sec. 14, Art. 12, aforesaid. It is agreed as a fact in the case that the corporation contemplated in the vote and order of subscription was a corporation altogether different from the Vicksburg & Nashville Railroad Company; and that, whilst the corporation so contemplated was not then *in esse*, still it was a vote and an order in favor of a specific body, and not a general bid to any and every comer; and that the corporation so contemplated was chartered on the 3rd January, or twenty-four days before this act was passed. It is evident, therefore, that in "ratifying and confirming to the Vicksburg & Nashville Railroad Company" the vote "so heretofore had on behalf of the Vicksburg & Grenada Railroad as aforesaid," and in making it "the duty of the Board of Supervisors of Grenada County * * * to subscribe for fifty thousand dollars of the capital stock of the Vicksburg & Nashville Railroad Company," based upon "the vote aforesaid;" the legislature did "authorize a county to become a stockholder" in a

*Pierce on Railroads (edit. of 1881) p. 48.

company without the consent of two-thirds of the voters given at an election held on *that* question. The section under consideration is not relied upon, to waive mere irregularities in the execution of a power, but as conferring power by retrospective operation. If the vote is obligatory on the County of Grenada, as in favor of the V. & N. R.R. Co., it became so for the first time by virtue of the statute; and if the legislature could not, in the first instance, have authorized the company to invest in the V. & N R. R. Co. by virtue of a vote to the Vicksburg & Grenada R.R. Co., it cannot by a subsequent act validate such proceeding.*

(B) This sec. 4 is also obnoxious to the constitutional objection that it *compels* the county to subscribe to a designated company without their assent. It is made "the duty of the Board," without any discretion whatever, so to subscribe. It is too well settled now to discuss, that the legislature may *authorize* these subscriptions, and may authorize a board of county officers to determine whether they shall be made, without submission to the people (provided, of course no constitution prohibit); but to say that the legislature may *compel* said subscription, without allowing any option to either the people or their local officers is a very different proposition. I maintain that it cannot be done.†

It will not do to say that inasmuch as the vote was cast to aid a railroad from Genada to Vicksburg, that the extension of the line of the V. & N. R. R. Co. (G. H. & E. R. R. Co.) over that route fulfilled the requirements of the vote. The legislature cannot convert a promise to contribute to a specified object into an agreement to take stock in a particular corporation.‡ *A fortiori* can they not do so, where that specific object was to be worked out by a specific other corporation in contemplation if not *in esse*; and where the very statute which seeks to effect such con-

*Sykes v. Columbus, 55 Miss., 115; People v. Batchellor, 53 N. Y., 128; Horton v. Thompson, 71 N. Y., 513; Hardenburgh v. Van Keuren, 16 Hun., 17; Marshall v. Silliman, 61 Ill., 218; Wiley v. Silliman, 62 Ill., 170.

†People v. Batchellor, 53 N. Y., 128; Hasbrouck v. Milwaukie, 13 Wisc, 37; Hampshire v. Franklin, 16 Mass., 83; Gaddis v. Richland Co., 92 Ill., 119; 19 Wall, 91.

‡ Pittsburg & S. R. Co. v. Gazzam, 32 Pa. St., 340.

version works a change so vast, from the object specified by the vote to the objects of the corporation sought to be benefitted by the statute as was wrought in this case, by this act of January 27th. *

I have already pointed out, on page 33 of this brief, that it is impossible for the purchaser to trace any connection between these bonds payable on their face to the V. & N. R. R. Co., and the acts of 1860 and 1871 under whose provisions they profess on their face to have been issued, save by going into this act of 27th of January, and receiving notice of all the facts shown in the act.

I come, now, to my second, or alternative, proposition. If the vote and order to subscribe were not nullities for the reasons just considered, but were valid; then when the Vicksburg, Yazoo Valley & Grenada R. R. Co. was incorporated on the 3d of January, 1872, it received the right to accept such vote and order, and by such acceptance to perfect the transaction into an irrevocable contract.† It is true, that prior to such acceptance, the legislature had the power to revoke the offer of the county, and prohibit the acceptance; but the legislature did not do that. On the contrary it ratified and confirmed to offer; yet, at the same time, undertook to take it away from the company to which it was made, and give it, without the consent of the county or of the company, to another and a different corporation, and a rival. These votes to subscribe, and orders in furtherance of such vote, have in several cases been held to be "in its essence a right and privilege of the railroad company" which will pass by its contract, *egs.* by its consolidation with another company.‡ Such being the case the legislature had no power to give that right away.

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* See page 33 of this brief, Marsh v. Fulton Co., 10 Wall., 676.

†Tonica &. P. R. Co. v. McNeely, 21, Ill. 71; Johnston v. Ewing, F. Univ., 35 Ill., 518, Dorris v. French, 6 Thomp. & C., 581; Hughes v. Antietam Man. Co., 34 Md., 316; Kidwelly Canal Co. v. Raby, 2 Price (Exch.) 93; Midland Gt. W. R. Co. v. Gordon, 16, M. & W. 804.

‡County of Scotland v. Thomas, 94 U. S. 682; County of Henry v. Nicolay, 95 Ib. 619; Empire v. Darlington, 101 U. S., 87; Harter v. Kernochan, 103 U. S., 562.

If the V. & N. R. R. Co. had any title whatever to receive these bonds, then, it cannot be through said section 4, but must be by virtue of the consolidation made on the 3d of March, 1872, between the V. & N. R. R. Co. as originally constituted, and the said V., Y. V. & G. R. Co. But neither had it any title from that source for the very sufficient reason that the charter of the latter company, to whom this vote and subscription appertained, contained no authority to the county to issue bonds, except on votes to be cast after the act was passed, and did not profess to authorize such bonds in this case, and further, that the contract of consolidation between the two companies does not propose to convey to the consolidated company any county bonds or any right to receive county bonds.

3. My third proposition is, that even if section 4 is constitutional and effective, it on its face prescribed conditions precedent to the subscription therein directed to be made, which have never been performed. The language of the section is: "And when, after such acceptance and adoption the said so-called 'Vicksburg and Grenada' Railroad shall form and constitute a part and portion of the Vicksburg & Nashville Railroad, and *shall be constructed*, owned and held by the Vicksburg and Nashville Railroad Company; and it shall be lawful for, and is hereby made the duty of the Board of Supervisors of Grenada County * * * to subscribe, etc." By this language the construction, not location, of the road is made a condition precedent to the power to subscribe.

This condition the purchaser was bound to inquire into, because the bonds contain no recital that they were issued in accordance with the provisions of the act of 1872; and on this point *Marsh v. Fulton County* is conclusive.

It may be urged here, as it was urged below, that even if the objections presented might otherwise be good as against class B, if class A had never been issued; yet class A having been issued, and those objections not being applicable to them, and there being no means to distinguished bonds of class B from those of class A, a *bona*

fide purchaser will be protected. *Marcy v. Oswego*, 92 *U. S.*, *637*, and its cognate cases were relied on to support this view; but they do not do so. In the first place, in none of those cases, was it shown that the bonds excessively and unlawfully issued were the very bonds sued on; here it is so shown. In the second place, in all those cases the facts which went to show the illegality of the issue were matters *in pais*, and with notice of which the purchasers were not chargeable, because of the recitals of the bonds; here the matters alleged are matters appearing on the face of the bonds and of that statute into which the purchaser must look in order to connect the bonds with those other statutes under whose authority they profess to have been issued. The purchaser being thus notified that there is a large issue of illegal bonds of Grenada County payable to this V. & N. R. R. Co., cannot buy hap-hazard, and then having purchased of that illegal issue, protect himself by a plead of *bona fides*.

H. P. BRANHAM,
Atty. for Plffs. in Error.

112-261

SUPREME COURT of the UNITED STATES

October Term, 1884.

No. 609.]

THE BOARD OF SUPERVISORS OF GRENADA CO., WILEY H. POWELL, PRESIDENT, ET AL., *Plaintiff in Error.*

vs.

J. BRAGDON & CO., A FIRM COMPOSED OF REUBEN P. MAIM, WASHINGTON C. DEPAU, ET AL.,
Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

Brief for Defendants in Error, by

HOUSTON & REYNOLDS,
ATTORNEYS.

JACKSON, MISS.:
CHARLES WINKLEY, BOOK AND JOB PRINTER,
CAPITOL STREET,
1884.

SUPREME COURT of the UNITED STATES

October Term, 1884.

GRENADA COUNTY, PLAINTIEF IN ERROR,

vs.

L. BRAGDON & CO., DEFENDANTS IN ERROR.

Argument for Defendants in Error.

The Grenada, Houston and Eastern Railroad Company was chartered by the Legislature of the State of Mississippi in 1860. The Company was granted power to construct a railroad from Grenada, then in Yalobusha county, eastwardly to the Alabama line. The 15th section of the act of incorporation gave "full power and authority to connect or consolidate with any Railroad Company." Acts of 1860, p. 369.

At the same session of the Legislature, an Act was passed authorizing certain counties to subscribe to the capital stock of the Company on the assent of a majority of the voters: authority to issue bonds was not granted. Acts of 1860, p. 412.

On the 1st of December, 1869, a new Constitution was adopted, Art. 12, of sec. 14, of which is, that "the Legislature shall not authorize any county, city or town to become a

stockholder in, or lend its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a special election, or regular election, to be held therein, shall assent thereto."

In 1870, the county of Grenada was created, Acts of 1870, p. 124.

On the 25th of March, 1871, an act was passed entitled, "An Act to amend an Act entitled an Act to aid in the construction of the Grenada, Houston and Eastern Railroad, approved February 10th, 1860."

The first section extends the provisions of the act of February 10th, 1860, to Grenada county, and to any county in the State through which the road may run, and required the Board of Supervisors, which had succeeded to the jurisdiction conferred by the Constitution of 1832, upon the Board of Police, on petition of twenty-five or more citizens to cause an election to be held whether a sum, not exceeding two hundred thousand dollars, shall be subscribed to the capital stock of the Grenada, Houston and Eastern Railroad Company. This section concludes thus, "and all such elections when held shall be conducted *in all things* as required in the act of which this is amendatory, and of the *constitution* and *laws* in force *at the time so held.*"

The second section provides, that any town may subscribe to the capital stock of the Railroad Company, if asssented to by a *constitutional majority of two-thirds of the votes polled.*

The fourth section, is that it shall be lawful for the Board of Supervisors of any county, which shall have voted a tax as provided in this, or of the act to which this act is amendatory, to issue bonds to pay off the subscription of the counties to the capital stock of the Grenada, Houston and Eastern Railroad Company.

The ninth section enacts, that in order further to facilitate the building of the railroad, the Board of Directors of the Company shall have full power to enter into any agreement for

connection or consolidation *with*, or *transfer of capital stock and franchises to* any other Railroad Company, and to adopt such name as may be agreed upon by the contracting parties. Acts of 1871, p. 180.

On the 27th January, 1872, "an Act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company, and for other purposes", was passed.

This act does not create a new company.

The first section amends the previous acts of incorporation so as to authorize an extension from Grenada, westwardly to Vicksburg.

The second section changes the name of the Company to the Vicksburg and Nashville Railroad Company, makes all subscriptions and bonds to the old Company payable to the Vicksburg and Nashville, and invests it with all the property, powers and franchises of the Grenada, Houston and Eastern Railroad Company.

The third section authorizes subscriptions by counties and towns and the issuance of bonds.

The fourth section validates a subscription of $50,000 voted by Grenada County to aid in the construction of *a railroad* from Vicksburg to Grenada, and transfers it to the Vicksburg and Nashville Railroad Company and empowers the Board of Supervisors to issue bonds in payment. Acts 1872, p. 286.

On the 5th of April, 1872 a general Act was passed authorizing counties and towns to subscribe to the capital stock of Railroad Companies, and to issue bonds in payment thereof, not to bear interest exceeding seven per cent. Acts 1872, p. 120.

This is a summary of the constitution and laws of Mississippi which have any reference to the matters in this contestation.

The agreement of counsel show the following facts: objections to their *competency and relevancy* being reserved. T. 11.

That defendants in error are the *bona fide* holders for value of the bonds sued upon, and before maturity.

That Grenada county assessed and collected taxes to pay the coupons for 1872 and 1873; that the levy for 1872 did not embrace the bonds from 151 to 175, they not having been issued until Oct., 1872. That certificates of stock were issued by the Vicksburg and Nashville Railroad Company to Grenada county, and that they were never tendered back to the Railroad Company.

That Grenada county was represented at all the meetings of stockholders. That the Act of 27th January, 1872, was accepted by Directors of the Grenada, Houston and Eastern Railroad Company on the 31st of January, 1872. T. 11 and 12.

That the bonds and coupons numbered from 151 to 188, inclusive, were issued to pay a subscription voted, for *a railroad* from Grenada to Vicksburg, and that at the time there was no charter of any such company: that all the other bonds were issued to pay the *subscription* to the Grenada, Houston and Eastern Railroad Company, T. 25.

At the August term, 1871, the Board of Supervisors of Grenada ordered an election to test the question of subscription of $50,000 to the Grenada, Houston and Eastern Railroad Company, the same to be paid in bonds of the County. T. 12. No election was held under this order.

At the October Term, 1871, the Board ordered an election to be held on the 7th of November, to take the sense of the legal voters of the county, whether they would subscribe $50,000 to the capital stock of the Grenada, Houston and Eastern Railroad Company, to be paid in eight equal annual installments with interest from the 1st of January, 1873, at eight per cent. unless the sum subscribed should be paid off in County Bonds, and if so, the interest at eight per cent. shall become due from the date of the bonds. T. 13, 14, 15.

At the December term of the Board it appearing that the election was duly held on the 7th of November, 1871, and that the constitutional majority of two-thirds of the legal and registered voters of the county were cast in favor of the sub-

scription, it was ordered that the President of the Board subscribe for $50,000 to the capital stock of the Company. T., 15, 16.

At the same time, and as a part of the same order, an election was ordered to ascertain the popular will as to a subscription to the Vicksburg and Grenada Railroad Company, and a subscription ordered after the assent of the constitutional two-thirds of the voters.

At the March term, 1872, on petition of Tucker, President of the Vicksburg and Nashville Railroad Company, praying that the board issue and deliver to the Vicksburg and Nashville Railroad Company, bonds of the county sufficient to pay off the $50,000 to the capital stock of said Company, *heretofore made* by the president of the board *to the Grenada, Houston and Eastern Railroad Company*, now Vicksburg and Nashville, with coupons of interest attached in amounts sufficient to cover the interest on said bonds from *May 1st*, 1872, as the same falls due; and it appearing to the board that the facts stated in the petition are true, it was ordered as prayed for. T., 16.

At the same term proxies were appointed to represent the county. T., 17.

At the July term the levy of a tax was ordered to pay the first installment of interest on the bonds. T., 17.

At the July and August terms of the Board the petition of Tucker, President of the Vicksburg and Nashville Railroad Company, to issue bonds to pay off the subscription of $50,000 to the Company was continued at the first term and rejected at the latter. T., 17.

At the October term, 1872, the petition of Tucker, which had been rejected at the August term, was then granted, and bonds to bear interest from *July 1st*, 1872, were ordered to be issued.

At the November term, 1872, the sheriff of the county was required to give bond as tax collector of the tax levied to pay off the bonds. T., 18.

At the January term, 1873, G. W. Trimble was authorized to vote the stock of the company. T., 18-19.

At the July term, 1873, there was a special tax levied to pay off the interest on the bonds. T., 19.

At the same term E. S. Fisher made a motion to rescind the order for the special tax, and his motion was overruled. T., 19.

At the December term, 1873, G. W. Trimble was appointed to vote the stock of the county.

The defendants in error became the holders of the bonds on the *first of January*, 1874. T., 11.

All the bonds are dated May 1st, 1872. None bear date after or at the time of the October 1872 order of the Board. Defendants in error instituted this suit on fifty-nine matured bonds and attached coupons, and on detached coupons of twenty-one unmatured bonds, against the Supervisors of Grenada county.

A number of special pleas were filed, which were withdrawn under an agreement that any matter of defense might be presented under the general issue. The case was submitted to a jury under an agreed state of facts, objections to the competency and relevancy of which were reserved, and the court instructed the jury that the facts as admitted did not constitute a defense, and directed a verdict for defendants in error. From this verdict and the judgment thereon, this writ of error is prosecuted.

1. The bonds are dated May 1st, 1872; the interest is payable semi-annually, on the first of March and September. They contain this recital:

"This bond is one of a series of bonds issued and delivered to the Vicksburg and Nashville Railroad Company, by Grenada county, to meet and pay off the amount subscribed by

said county to the capital stock of the railroad company aforesaid, in pursuance of an act of the Legislature of the State of Mississippi, entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad Company,' now Vicksburg and Nashville Railroad, approved February 18, 1860, and of an Act amendatory thereof, passed March 25th, 1871, and in obedience to a vote of the people of said county, at an election held in accordance with the provisions of said acts."

When a corporation has power to issue commercial securities and does issue them, a *bona fide* holder has the right to presume that the power was properly exercised, and the law shuts out any inquiry as to the exercise of such power.

When the securities recite the circumstances which bring them within the power, the corporation, as against a *bona fide* holder, is estopped to deny the truth of the recitals.

The same principles may be stated thus: A *bona fide* purchaser of municipal bonds is not bound to inquire further than the power for their issuance, and that the officers who were thereunto authorized have decided that the precedent conditions upon which the power was to be exercised have been fulfilled. If the power was conferred and the decision made, the municipality is barred of any defense, because of irregularities, errors or even fraud of those in authority as against a *bona fide* holder.

Block vs. Coms., 99 U. S., 696.
Pompton vs. Cooper, 101 U. S., 204.
Orleans vs. Platt, 99 U. S., 682.
San Antonio vs. Mebaffy, 96 U. S., 314.

These principles raise the question as to the power of Grenada county to subscribe to the capital stock of the Vicksburg and Nashville Railroad Company, formerly Grenada, Houston and Eastern Railroad Company, and to issue bonds in payment thereof.

This power cannot be implied; it must be expressly granted.

As Grenada county was created after the adoption of the Constitution of 1869, though the Railroad Company was chartered previously, any act of the Legislature conferring upon the county power to subscribe and issue bonds must not be violative of the constitutional provision, which requires the assent of two-thirds of the qualified voters before the power can be exercised.

The acts of February 10th, 1860, and of March 25th, 1871, are recited in the bonds as the authority for their issuance.

The act of February 10th, 1860, is entitled, "An act to aid in the construction of the Grenada, Houston and Eastern Railroad." It was passed at the same session with the original act of incorporation, and grants power to certain named counties to subscribe for stock in the Railroad Company, on the assent of a "majority of the qualified electors voting," and directs the mode and manner in which the power shall be exercised by the Boards of Police, and of the assessment and collection of the taxes to pay the amount subscribed and the transfer of shares of stock to the tax-payer.

The act of March 25th, 1871, is entitled, "An Act to *amend* an Act to aid in the construction of the Grenada, Houston and Eastern Railroad, approved February 10th, 1860." This act gives Grenada county power to subscribe for stock and issue bonds and is constitutional. It is conceded that the first section gives the power to make the subscription, and the fourth section authority to issue the bonds, but it is contended that the act is unconstitutional, because it authorizes the subscription to be made on the assent of a majority of the qualified voters, and the constitution of the State requires a two-thirds vote.

The first section enacts, that the act of February 10th, 1860, shall apply in all its provisions to Grenada county, and to any other county through which the railroad may pass, and that it shall be the duty of the Board of Supervisors of Grenada county, and of the other counties, upon the petition of

twenty-five or more citizens, to cause an election to be held, to take the sense of the voters thereof, whether a sum not exceeding two hundred thousand dollars shall be subscribed to the capital stock of said Railroad Company to be paid by taxation, and to do all other acts which the said act, of which this is amendatory, requires of the Board of Police, and wherever in said act, any duty is required of, or act authorized to be performed by the Board of Police, or the President thereof of any of the counties therein named, the same shall apply to the Board of Supervisors of the different counties and the President thereof," and all such elections when held, shall be *conducted in all things* as required in the act of which this is amendatory, and of the *constitution and laws in force* at the time so held."

It is argued by counsel for Plaintiff in Error, that the phrase, "*election shall be conducted*," must be construed as referring to the act of casting and receiving the ballots, the day and time of voting, and all other matters relating thereto up to, but not including the ascertainment of the result of the election. This phrase has no such restricted meaning. The verb "conduct" means to "manage," "regulate," "control," "direct," substitute for, "conducted" its accepted meanings, and the act would read "all such elections shall be "managed," "regulated," "controlled," "directed," in all things as required in the amended act and in the constitution and laws in force at the time. If the constitution contained a provision, as it did, that no county should lend its credit to any corporation unless by the assent of two-thirds of the voters at a special or general election held for the purpose, this act intended that the election authorized to be held should be, "managed," "controlled," "directed," "regulated" by this constitutional requirement.

An Act providing how "elections shall be conducted," "reg-

ulated," "directed," "managed," if it omitted provisions for the ascertainment of the result, would be wanting in completeness. The result of an election is its chief end; without a result it is simply nothing. To contend that the words employed in the act were intended to have reference to the mode and manner of holding the election, and not the ascertainment of the result, is to omit the "weightier matters of the law." Examine chap. 6, of the Code of 1871, of Mississippi, (p. 90,) adopted at the same session of the Legislature which passed the act of the 25th of March, 1881. It is entitled, "An Act in relation to electors." An Act to regulate, control, manage, or conduct elections, would have been titles equally as appropriate. It provides for the time, notice, mode and manner of holding elections, duties of officers, preservation of the peace, ascertainment of the result and contests. This shows that something more was in the legislative mind in the use of the pharse which we are discussing, than the mere machinery by which the election was to be controlled.

Courts in the construction of statutes endeavor to ascertain the intention of the law-making power and to put such a construction upon them as will carry it into effect. This intention may be ascertained from a consideration of the entire text of the particular act as well as contemporaneous legislation on the same subject. Section second of the act we are considering empowers towns to subscribe to the capital stock of this Railroad Company, and requires, before any subscription is made, that it shall receive the assent of the "constitutional majority of two-tirds of the votes polled," thus demonstrating that the attention of the Legislature was called to the constitution requiring two-thirds of the people to assent thereto. It will not be presumed that in like subscriptions by counties that they intended that a majority only should give their assent, but their intention will be held to be the same as to counties as was expressed as to towns, and the words, "elec-

tion shall be conducted," will be so construed as to carry this intention into effect.

But it is urged by counsel for Plaintiff in Error, that section two, of the act is unconstitutional, because it authorizes the subscription on the assent of two-thirds of the votes *polled*, and the constitution requires two-thirds of all the voters. To sustain this, Hawkins vs. Carroll Co., 50 Miss., 735, and Woodruff vs. Okolona, MSS., opinion of Judge Hill, decided after the passage of the act, are cited. We submit that these cases are in conflict with the decision of this court, and of the Supreme Court of Missouri, rendered at the time Mississippi adopted the constitutional provision in question.

County of Cass vs Johnston, 95 U. S. 360.

St. Joseph Township vs. Rogers, 16 Wall., 644.

State vs. Renick, 37 Mo., 270.

State vs. Bendor, 38 Mo., 450.

Supervisors vs. Galbreath, 99 U. S., 220.

At the session of the Legislature of 1871, which adopted this act, there were chartered the following railroads, viz: The Meridian, Red River and Texas, (Acts of 1871, p. 134–6.) the Artesia, Starkville and Grenada, (*Ib.* 141;) the Macon and Tombigbee, (*Ib.*, 154); the New Orleans, Jackson and Great Northern, charter amended, (*Ib.* 174); the Lexington Branch, (*Ib.* 201); the Elyton, Corinth and Tennessee River, (*Ib.* 217); the Brownsville and Holly Springs, (*Ib.* 221); the Yazoo City, Raymond and Crystal Springs. (*Ib.* 230); the Vicksburg, Pensacola and Ship Island, (*Ib.* 249); the Ripley, (*Ib.* 278); the Canton and Vicksburg, (*Ib.* 804), and in all of them authority was given to counties and towns to subscribe to the capital stock, after the assent of two-thirds of all the voters, or after the assent of that number of voters as required by the constitution. It will not be presumed that it was the intention of the Legislature, as manifested in the various acts which we have cited, to prescribe a different rule in ref-

erence to the subscription and issuance of bonds by Grenada county, and in a particular wherein was involved a constitutional provision, and which, if omitted, rendered the act void; the main purposes of the act being to extend this constitutional provision to this particular county, and other counties through which the railroad might run.

Statutes must be so interpreted as to give effect to all the words and phrases employed, if such interpretation be reasonable, and is not repugnant to its provisions, nor inconsistent with its objects. Under this rule you must give some meaning to the phrase "constitution and laws in force at the time the election was held." If the construction contended for by counsel for Plaintiff in Error, be the proper one, they are meaningless, for the Act of 1869, which was amended by the Act of 1871, gave full directions as to the mode and manner of conducting the election, and also, by what vote the assent of the county was to be determined. A new constitution of the State had just been adopted, and the Legislature was then engaged in codifying the laws, which resulted in the Code of 1871.

A general law as to elections was about to be passed, it was contemplated that it would take effect during the year. The constitution was adopted under an election held under the Reconstruction Acts of Congress, and the Legislature of 1870 was brought into existence under the same authority. There was no general law relating to elections, except special elections to fill vacancies in the Legislature, (acts of 1870, p. 146,) enacted after the adoption of the constitution of 1869, until the Code of 1871. Hence, the provision was inserted in the act, that the proceedings to take the sense of the voters as to the subscription should be conducted in all things as required by the constitution and the laws in force at the time the election was held.

The constitution provides, that elections shall be by ballot,

what shall be the age and time of residence of voters, that they shall be registered, (Art. 7.) that there shall be no educational or property qualifications, (Art. 1, sec. 18,) that no county shall become a stockholder in any corporation unless assented to by two-thirds of the voters. (Art. 12, sec. 4.) If it was the intention of the Legislature to put any of these constitutional provisions into effect as to the election directed to be held by the Act of 25th of March, 1871, is it not equally manifest that it was their intention to enforce them all and not a part? If a part, which part, that which relates to matters that preceded the holding of the election, or to the election while being held, or to it after it was held? The only reasonable deduction is, that the constitution in all its provisions was intended to be enforced as to the elections held under the act of 1871. This conclusion is emphasized by the words employed as if to relieve any doubt which might arise. The direction is not that the election shall be conducted according to the constitution, but that it shall be *conducted in all things* according to the constitution, that in all respects it shall be "controlled," "regulated," by the constitution. The constitution provides that as to elections of this kind there must be the assent of two-thirds of the voters, and if the act meant that a majority should decide, the constitution does not control, regulate the election "*in all things.*"

Statutes will be so construed and applied as to avoid conflicts with the constitution, and give them the force of law, and will not be so construed as to make them unconstitutional unless it is clear and convincing they are so. Where they are susceptible of two constructions one of which is in harmony with the constitution and the other not, the former will prevail.

The contemporaneous construction of a statute is to have weight in determining its true meaning. The Supervisors of Grenada county and the Railroad Company, for whose benefit

the act was passed, construed it as intending that there should be the assent of the constitutional two-thirds.

We deduce the conclusion that the Act of March 25, 1871, is constitutional. The first section authorizes the subscription, and the fourth section the issuance of bonds. The power being conferred by the acts recited in the bonds, the county is estopped to deny that the power was not legally exercised, that the precedent conditions were not fulfilled.

It is contended by counsel for Plaintiff in Error, that if section one, of the act of March 25th, 1871, is constitutional, section four is unconstitutional, because it authorizes the issuance of bonds to pay off subscription previously made and sucd subscriptions made on a majority vote, are revoked by the constitution of 1869. That this is the logical sequence if the Legislature intended to change, by the act of March 25th, 1871, the rule as to a majority vote, and if this change was not intended to be made, then the first section is unconstitutional.

The fourth section of the act does authorize the issuance of bonds to pay off subscriptions, theretofore or thereafter made, and its validity is sustained in the case of Supervisors vs. Galbreath, 99 U. S., 220. Quoting from the opinion: "The amendatory act of 1871 only changed the mode of payment for the stock. Instead of payment by a tax imposed for that purpose, it provides that it shall be lawful for the Supervisors to issue bonds to pay off subscriptions made theretofore or thereafter, under the prior act of 1860." The Legislature intended to abrogate the rule as to a majority vote for subscriptions afterwards made, and for those made before the constitution of 1869, gave the Supervisors power to pay in bonds instead of by taxation. The sections are consistent and constitutional.

II.

The power to subscribe for stock and issue bonds, is conferred by the Act of 27th of January, 1872.

The validity of this act is not questioned, but as it is not recited in the bonds and as other acts are, it is contended, that it cannot be appealed to as the source of power.

"*Falsa demonstratia non nocet.*" "The bad here does not hurt the good. The act of the commissioners (supervisors) was the act of the county, and the county is conclusively bound by what they have done. As between the county and a *bona fide* holder, no questions involving the infinity of the securities can be raised."

Coms. vs. January, 94 U. S., 206.

It is the fact as shown by the agreed statement, that the vote was taken and the subscription made before the passage of the act of January, 1872. But if the power was conferred, a *bona fide* holder is not required to look further, and is not chargeable with notice of defects, which exist in the exercise of the power.

We deduce the authority to issue the bonds under the act of March 25th, 1871, and would not have adverted to the act of 1872, but for the notice taken of it by opposing counsel.

III.

It is contended that before the subscription was made and the bonds were issued the authority, if any, conferred by the vote was revoked by the repeal of the charter of the Grenada, Houston and Eastern Railroad Company, and the transfer of its stock and franchises to the Vicksburg and Nashville Railroad Company. That if the charter of the Grenada, Houston and Eastern Railroad Company was not repealed, it was so fundamentally altered by the act of the 27th of January, 1872, that it released Grenada county from its stock subscrip-

tion, voted before such alteration was made and accepted by the Company.

That these facts invalidate the bonds, and that Defendants in Error are chargeable with notice of them.

It is not the fact, that before any subscription was made by Grenada county to the Grenada, Houston and Eastern Railroad Company, it was transferred to the Vicksburg and Nashville Railroad Company. A subscription was actually made to the very Company for which the people voted.

At the December term, 1871, the Board of Supervisors directed that the President subscribe for $50,000 of the capital stock of the Grenada, Houston and Eastern Railroad Company. T. 15.

At the March term, 1872, in the decree directing the issuance of the bonds to the Vicksburg and Nashville Railroad Company, it is recited, that there was a subscription "heretofore made by the President of this Board to the Grenada, Houston and Eastern Railroad Company, now the Vicksburg and Nashville, on behalf of Grenada county," and it is ordered "that the bonds be issued to pay off this subscription agreeably to the terms thereof." T. 16.

It is an agreed fact, that there was a subscription to the Grenada, Houston and Eastern Railroad Company. T. 25, section 9.

If the subscription was actually made, bonds could be issued to any other company to which it had been legally transferred.

Nugent vs. Putnam Co., 19 Wall., 241.
94 U. S., 80, 682.
93 U. S., 569.

But it is contended that the bonds recite that they are issued to pay off a subscription by the county to the Vicksburg and Nashville Railroad Company. The Grenada, Houston and Eastern Railroad Company and the Vicksburg and Nashville

Railroad Company, are not distinct companies, but one and the same. The act of 27th of January, 1872, does not create a new company, names no incorporators, contains no grant of corporate powers, but amends the acts in force concerning the Grenada, Houston and Eastern Railroad Company, and changes its name. "The gift of new powers to a corporation does not destroy its identity much less change it into a new being. Such a gift is not a grant of corporate existence. It assumes corporate life already existing."

Central R.R. Co. vs. Georgia, 92 W. S., 673, 674.

Hence, if the Grenada, Houston and Eastern Railroad Company and the Vicksburg and Nashville Railroad Company are one and the same, a subscription to the one is a subscription to the other, and the recital in the bonds is entirely consistent with the fact of a consummated subscription previously made to the Grenada, Houston and Eastern Railroad Company. A subscription actually made to a company authorized at the time to consolidate with the companies, and which is afterwards affected, an issuance and delivery of bonds to the consolidated company in payment of the original subscription is warranted.

East Lincoln vs. Davenport, 94 U. S., 80.
Nugent vs. Putnam Co., 19 Wall., 241.
Calloway vs. Foster, 93 U. S., 567.
Scotland vs. Thomas, 94 U. S., 682.

It is held that if a prior vote be required to authorize a subscription in favor of a company having the power to consolidate with another company, and the vote is had, it will authorize a subscription in favor of the consolidated Company.

Washburn vs. Cass Co., 3 Dill, 251.
First Nat. Bk. of St Johnsburg vs. Concord, 50 Vt. 257.

The principle is, that when the Supervisors of a county as agents of the people are directed by a vote to make a subscrip-

tion to the stock of a particular company they cannot make it to a different company. If the company to which the subscription is voted has the authority to consolidate with or transfer its franchises to another company it is within the scope of the agent to make the subscription to the consolidated company, or the company to which the transfer is made. If the subscription is voted, as in this case, to the Grenada, Houston and Eastern Railroad Company, and the charter of the Company is amended and its name changed to the Vicksburg and Nashville Railroad Company, the subscription may be made to the latter Company. The subscription is to be made to the company to which the vote gives it. The Grenada, Houston and Eastern Railroad Company, and the Vicksburg and Nashville Railroad Company are identical. Therefore a vote to the one authorizes a subscription to the other.

It is necessary for the proper application of some of these principles that attention should be called to section 15, of the original charter and section 9, of the amendment of March 25th, 1871, which authorizes the Railroad Company, to connect, consolidate with, or transfer its capital stock and franchises to any other Company, and to adopt a name.

The next objection is, that the act of 27th of January, 1872, amendatory of the Acts of 1860, and of 1871, passed after the vote and the subscription and before the issuance of the bonds, was such a fundamental alteration of the charter, that it released the county from the obligation to pay its subscription. The fundamental alteration of a charter will release a non-assenting stockholder unless the alteration is such as is expressly or impliedly authorized by the original charter. The charter of 1860 and the amendment of 1871 authorized change of name and a consolidation with, and transfer of franchises to any other railroad company. The amendment of 1872 extends the line of the road to Vicksburg and to the Mississippi river, and authorizes the Company to own steam-

boats and use the same in transferring persons and property upon the Mississippi, Tennessee and Yazoo rivers. If there had been a consolidation with, or transfer to any other company having the power conferred by the act of 27th of January, 1872, such transfer or consolidation would have been binding upon the stockholders. We submit then, that the extension of the line and the right to own watercraft and employ them in navigation was within the contemplation of the burdens and rights imposed upon the stockholders, and that it cannot effect the merits of the question, whether these rights and burdens are imposed by an amended charter which is accepted by the Company or by the agreement of the stockholders or Board of Directors. If the alteration proposed is of a character which could be made by the contract of the Company it is not such a change as will release a stockholder, it is an amendment consistent with the scope and object of the corporation as originally created.

An amendment of a charter and its acceptance by a corporation will not, *per se*, release a non-assenting stockholder from his subscription. The corporation must have acted upon the amendment and availed themselves of the new franchises granted.

Hawkins vs. Miss. & Tenn. R.R. Co., 35 Miss. 688.
Frys Ex. vs. Lexington and Big Sandy R.R. Co., 2 Metc. Ky., 321.

The franchises of owning and operating watercraft or of an extension of the road westwardly from Grenada, is not shown to have been acted upon by the Company.

But if the alteration was fundamental and not within the scope and object of the original charter, and if it had been acted upon and put into execution by the Company, it is not shown that Grenada county did not assent to the proposed change. Even if it did not assent originally, the alteration may be ratified, and this ratification may be implied from ac-

quiescence or neglect on the part of the dissenting stockholder to restrain the Company from carrying into execution the proposed amendment.

Memphis Branch RR. Co. vs. Sullivan, 57 Ga., 240.
Bedford RR. Co. vs. Bowser, 48 Pd. St., 29.
Danbury RR. Co. vs. Wilson, 22 Conn., 435.
34 Vt., 2.
34 Me., 366.
13 Ind., 348.
10 N. J. Eq. 176.

The acts of ratification as shown by the agreed facts are: participation in the meeting of stockholders, acceptance of certificate of stock, levy and collection of taxes, the rejection of a petition of a tax-payer asking that the order for the tax be rescinded, and the long acquiescence in the alteration as made.

It is conceded, that the Board of Supervisors of Mississippi have only such powers as are granted, and such implied powers as are necessarily incident to those expressly given. But if they are vested with power to become a stockholder in a railroad company, then as an incident, they have implied authority to act as individual stockholders; such as appointing proxies, voting for or against amendments to charter, and doing any other act which a mere individual stockholder could do. The authorities establish the principle that the corporate authorities of a county may by their acquiescence, conduct and acts ratify acts which without such ratification, would not be binding, and such ratification would estop the county like natural persons.

County of Randolph v. Post, 93 U. S., 513.
Rogers vs. Burlington, 3 Wall., 654.
Bissell vs. Jeffersonville, 24 How., 300.
Supervisors vs. Schurch, 5 Wall., 781.
Pendleton vs. Avery, 13 Wall., 297.

It is admitted by counsel for Plaintiff in Error, that the revocation of the subscription after the vote is taken and before any subscription is actually made, and a material alteration of the charter, is no defense as against a *bona fide* holder of the bonds; but it is contended that in this case, Defendants in Error are chargeable with notice of the facts which establishes these defenses, because the bonds are executed to the Vicksburg and Nashville Railroad Company in payment of a subscription to that Company, that a holder of the bonds is bound to inquire as to the authority, and this compels him to examine the act of January 27th, 1872, which informs him of a vote to one company and a subscription to another, and a fundamental change in the charter after the vote.

That these defenses would not avail Grenada county in a suit brought by the Railroad Company against it, has been already considered.

It is not necessary that a holder of the bonds should derive authority for their issuance from the act of January 27, 1872. The acts of 1860 and 1871, grant the power and the right to change the name of the Company, and this change of name is recited in the bonds.

But if he is compelled to go to the act of January 27, 1872, for the authority, this act in connection with the recitals in the bonds, discloses no want of power or any facts which would avail as a defense. Concede that the act and the recitals show a vote to the Grenada, Houston and Eastern Railroad Company, and a subscription to the Vicksburg and Nashville Railroad Company, and that the bonds were issued to pay off that subscription, inasmuch as the act shows, that they were not different Companies, but one and the same, the subscription to the old Company, with a new name, would be valid. Concede that a *bona fide* holder is charged with notice of the amendment of the charter as made by the act of January 27th, 1872. A mere amendment of the charter and

an acceptanee of it would not release a stockholder. There must be non-assent, there must be no ratification, and in addition, the Company must have put the amendments into effect. If the holder of the bonds had thus been put upon inquiry, he would have found by an examination of the records of the Board of Supervisors of Grenada county that there was a vote of the people to the Grenada, Houston and Eastern Railroad Company, a subscription to that Company actually made by the President of the Board, an amendment of the charter by the act of January 27th, 1872, and that Grenada county assented to and acquiesced in this amendment, that it had afterwards issued its bonds to the Company, that it had paid its interest on the bonds by the collection of taxes, that it had held its certificates of stock, that it had its proxies to represent it at the stockholders' meeting and had done other acts to lead third persons to believe that the county had accepted the amendment to the charter. There would have been from this examination no disclosure of any defense to the bonds. If he had found any irregularities, these would have been found to be cured by the acts and conduct of the Supervisors, and of such a character as to estop them from denying the validity of the bonds. This estoppel does not result from the success or failure of the enterprise to aid which the bonds are issued, but from the acts and conduct of the Supervisors.

County of Ray vs. Vansycle, 96 U. S. 675.

It is shown that the Defendants in Error became the holders of the bonds sued upon on the first of January, 1874, after all these acts of ratification were performed.

IV.

It is next contended, that class B. of the bonds, those numbered from 151 to 188 inclusive, are invalid, because issued to pay the subscription voted to the Vicksburg and Grenada

Railroad, and when this vote was taken there was no such Company and that the fourth section of the act of 27th of January, 1872, is notice to the holders of the bonds of these facts.

The facts are, that the people of Grenada county voted in accordance with the constitution, for a subscription of $50,000 to the capital stock of a railroad from Grenada to Vicksburg, there being at the time no company chartered to construct a road over the contemplated route. Subsequently, the charter of the Grenada, Houston and Eastern Railroad Company was so amended as to authorize it to run its road over the route for which the people of Grenada county had voted the subscription, and the subscription is validitated by the Legislature and transferred to this Company, ratified and confirmed with its assent. The act of Grenada county in voting the subscription was *ultra vires*, but it was done in accordance with the constitution. All that was wanting to make it valid was a grant of power from the Legislature. It is submitted that the Legislature can cure, or confirm a want of power where it has authority to grant the power originally.

Ritchie vs. Franklin & Co., 22 Wall., 167.
Thompson vs. Lee Co., 3 Wall., 327.
16 Wall., 644, 666.
5 Wall., 194.
121 Mass., 460.

The validity of class B. of the bonds is not based alone upon the foregoing principle. The recitals in the bonds, that they were issued to pay off a subscription voted to the Grenada, Houston and Eastern Railroad Company, or to the Vicksburg and Nashville Railroad Company and in obedience to a vote of the people, and their date, May 1st, 1872, estops the county from showing that they were issued to pay off a subscription to the Grenada and Vicksburg Railroad Com-

pany or to any other Company than the one named, or at any other date than that recited.

92 U. S. 631, 625, and authorities cited, *supra*.

If section four of the act of 27th of January, 1872, is notice that all bonds issued under that section are invalid, there is nothing in the face of the bonds or in their recitals that they were so issued, in fact, the recitals contradict that the bonds have any connection with this section. But if the section put him on inquiry, and he had examined the records of the Supervisors of the county, he would have found that the bonds ordered to be issued under section four were so ordered at the October term, 1872, and he would have been justified in reaching the conclusion that bonds dated May 1st, 1872 were not issued under section four of the act.

If objection had been made to the testimony agreed to as a fact, that class B. of the bonds were issued after October, 1872, and to pay off the subscription to the Grenada and Vicksburg contemplated Railroad, it would have been excluded, because it varied the written agreement, the bonds, and contradicted their terms, which could not be done as against a *bona fide* holder. The admission of the testimony does not vary the principle, as all objections for competency and relevancy were reserved. T. 11.

If class A. of the bonds are valid, then are class B. They differ alone in times of maturity; in all other respects they are identical. There were $50,000 of class A, ordered to be issued. Defendants in Error are the holders of only $40,000. It is not shown that there are any other bonds outstanding against Grenada county, either in the hands of the Railroad Company, or third persons, than those sued upon and held by Defendants in Error. Here are bonds, all bearing the same date and containing the same recitals, and counsel for Plaintiff in Error would have a purchaser charged with

notice of certain facts as to part of them and not charged as to the other part. If the bonds and the act convey notice, they do it as to all and not a part, if they do not constitute notice as to all they are not notice as to part.

The fact which we have agreed to, viz: That the bonds numbered from 155 to 188, inclusive, were issued to pay for the subscription voted to the Vicksburg and Grenada Railroad Company is not disclosed by the recitals in the bonds, by the act of January 27th, 1872, by the minutes of the Board of Supervisors nor by the proceedings of the stockholders or Board of Directors of the Railroad Company. None of the decisions, State or Federal, require a *bona fide* holder to look beyond the sources of information which we have thus indicated. This fact to which we have agreed no required research would have revealed.

V.

After a summary of the competent and relevant facts, the case will be submitted.

The people of Grenada county in 1871, by the constitutional two-thirds majority, voted a subscription of $50,000 to the Grenada, Houston and Eastern Railroad Company, and a subscription was actually made by the President of the Board of Supervisors to the Company. At the March term, 1872, the Board ordered $50,000 of bonds to be issued to the Vicksburg and Nashville Railroad Company, to pay off the subscription, "with coupons of interest in amounts sufficient to cover the interest from the first of May," and the bonds were issued and dated May 1st, 1872, and these sued upon are dated May 1st, 1872. That the Railroad Company issued its certificate of stock to Grenada county, that the interest was paid on all the bonds for 1872 and 1873, that the county was represented in all the meetings of stockholders of the Com-

pany. That on the first of January, 1874, Defendants in Error became the *bona fide* holders of bonds, less than $50,000, the coupons for 1872 ane 1873 having been previously paid.

It is respectfully submitted that these facts show that the county is liable, and that the court properly instructed the jury to return a verdict for Defendants in Error.

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